

# Agenda

## Pwyllgor Cynllunio

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Dyddiad: Dydd Mercher, 5 Chwefror 2020

Amser: 10.00 am

Lleoliad: Siambr y Cyngor, Canolfan Ddinesig

At: Cynghorwyr: J Richards (Cadeirydd), J Guy (Dirprwy Gadeirydd), G Berry, J Clarke, T Holyoake, T Watkins, V Dudley, D Fouweather, J Jordan, C Townsend and R White

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### Eitem

### Wardiau Dan Sylw

1. Ymddiheuriadau dros Absenoldeb
2. Datganiadau o ddiddordeb
3. Cofnodion y cyfarfod diwethaf (Tudalennau 3 - 8)
4. Rheoli Datblygu Amserlen Ceisiadau Cynllunio (Tudalennau 9 - 78)
5. Penderfyniad ar apeliadau (Tudalennau 79 - 84)

Mae'r dudalen hon yn wag yn

# Minutes



## Planning Committee

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Date: 8 January 2020

Time: 10.00 am

Present: Councillors J Richards (Chair), M Al-Nuaimi, G Berry, J Clarke, V Dudley, D Fouweather, J Jordan, C Townsend, R White and M Linton

In Attendance: Joanne Evans (Senior Solicitor), Tracey Brooks (Development and Regeneration Manager), Stephen John Williams (West Area Planning Manager), Joanne Davidson (East Area Development Manager), Lisa Davies (Governance Officer), Neil Barnett (Governance Officer) and Matthew McEwan (Senior Traffic Transport & Development Officer)

Apologies: Councillors J Guy

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### 1. **Declarations of Interest**

Councillor Miqdad Al-Nuaimi - Norse Board, Ringland Primary School, left the Chambers  
Councillor M Linton – Governor at Ringland Primary School left the Chambers  
Councillor Jason Jordan – Prejudicial Interest on application, left the Chambers

### 2. **Minutes of the meeting held on**

The minutes of the meeting held on 04 December 2019 were submitted.

#### **Resolved**

That the minutes of the meeting held on 04 December 2019 be taken as read and confirmed, subject to the above

### 3. **Development Management: Planning Application Schedule**

(1) That decisions be recorded as shown on the Planning Applications Schedule attached as an Appendix A

(2) That the Development Services Manager be authorised to draft any amendments to/additional conditions or reasons for refusal in respect of the Planning Applications Schedule, attached

### 4. **Appeal Decisions**

Members' attention was drawn to the appeals report, for information.

Mae'r dudalen hon yn wag yn

Appendix A  
PLANNING COMMITTEE – 08 01 2020  
DECISION SCHEDULE

No	Site/Proposal	Ward	Additional Comments	Decision
<b>Site:</b> <b>19/0703</b>	<b>Site:</b> Storage land the Newport business centre, corporation road, Newport, NP19 4RF  <b>Proposal:</b> Demolition of existing industrial units and construction of new industrial units Flood risk, highways and parking  <b>Recommendation:</b> Granted with Conditions	<b>Lliswerry</b>		The application was withdrawn from the agenda by the applicant
<b>19/0724</b>  <b>Tudalen 6</b>	<b>Site:</b> 6, Ombersley Road, Newport, NP20 3EE  <b>Proposal:</b> Change of use of a four bedroom dwelling (c3 use) to a six bedroom house of multiple occupation (c4 use) <b>Main considerations:</b> Parking, character of area  <b>Recommendation:</b> Granted with conditions	<b>Allt-Yr-Yn</b>	Councillors Charles Ferris and Matthew Evans - Ward Members, spoke in objection to the application	Refused  The application was refused due to the surrounding area is heavily trafficked and experiences high levels of demand for on street parking. The proposed HMO will increase demand for on street parking, to the detriment of highway safety.
<b>19/0848</b>	<b>Site:</b> Ringland primary school, Dunstable road, Newport, NP19 9LU  <b>Proposal:</b> Replacement boundary fence and gates  <b>Main considerations:</b> Design, appearance and landscaping  <b>Recommendation:</b> Granted with conditions	<b>Ringland</b>	Councillor M Linton declared an interest due to being a Governor of the school Cllr M Al-Nuaimi declared an interest due to being on the board of Norse, both Councillors left the Chambers at 10:53 returning at 10.57	Granted with conditions
<b>19/1103</b>	<b>Site:</b> 51, Mill heath, Bettws, Newport, NP20 7RA  <b>Proposal:</b> Retention of summer house with decking  <b>Main considerations:</b> Impact on residential amenity  <b>Recommendation:</b> Granted with conditions	<b>Bettws</b>	Cllr Jason Jordan declared an interest in the application – due to the application being submitted from a fellow Ward Member. Councillor Jordan Left the Chamber at 10.57 Returning at 11.03	Granted with conditions



Mae'r dudalen hon yn wag yn



# Report

## Planning Committee

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### Part 1

Date: 5<sup>th</sup> February 2020

**Subject** Planning Application Schedule

**Purpose** To take decisions on items presented on the attached schedule

**Author** Head of Regeneration, Investment and Housing

**Ward** As indicated on the schedule

**Summary** The Planning Committee has delegated powers to take decisions in relation to planning applications. The reports contained in this schedule assess the proposed development against relevant planning policy and other material planning considerations, and take into consideration all consultation responses received. Each report concludes with an Officer recommendation to the Planning Committee on whether or not Officers consider planning permission should be granted (with suggested planning conditions where applicable), or refused (with suggested reasons for refusal).

The purpose of the attached reports and associated Officer presentation to the Committee is to allow the Planning Committee to make a decision on each application in the attached schedule having weighed up the various material planning considerations.

The decisions made are expected to benefit the City and its communities by allowing good quality development in the right locations and resisting inappropriate or poor quality development in the wrong locations.

**Proposal** **1. To resolve decisions as shown on the attached schedule.**  
**2. To authorise the Development and Regeneration Manager to draft any amendments to, additional conditions or reasons for refusal in respect of the Planning Applications Schedule attached**

**Action by** Planning Committee

**Timetable** Immediate

This report was prepared after consultation with:

- Local Residents
- Members
- Statutory Consultees

The Officer recommendations detailed in this report are made following consultation as set out in the Council's approved policy on planning consultation and in accordance with legal requirements

## **Background**

The reports contained in this schedule assess the proposed development against relevant planning policy and other material planning considerations, and take into consideration all consultation responses received. Each report concludes with an Officer recommendation to the Planning Committee on whether or not Officers consider planning permission should be granted (with suggested planning conditions where applicable), or refused (with suggested reasons for refusal).

The purpose of the attached reports and associated Officer presentation to the Committee is to allow the Planning Committee to make a decision on each application in the attached schedule having weighed up the various material planning considerations.

The decisions made are expected to benefit the City and its communities by allowing good quality development in the right locations and resisting inappropriate or poor quality development in the wrong locations.

Applications can be granted subject to planning conditions. Conditions must meet all of the following criteria:

- Necessary;
- Relevant to planning legislation (i.e. a planning consideration);
- Relevant to the proposed development in question;
- Precise;
- Enforceable; and
- Reasonable in all other respects.

Applications can be granted subject to a legal agreement under Section 106 of the Town and Country Planning Act 1990 (as amended). This secures planning obligations to offset the impacts of the proposed development. However, in order for these planning obligations to be lawful, they must meet all of the following criteria:

- Necessary to make the development acceptable in planning terms;
- Directly related to the development; and
- Fairly and reasonably related in scale and kind to the development.

The applicant has a statutory right of appeal against the refusal of permission in most cases, or against the imposition of planning conditions. There is no third party right of appeal against a decision.

Work is carried out by existing staff and there are no staffing issues. It is sometimes necessary to employ a Barrister to act on the Council's behalf in defending decisions at planning appeals. This cost is met by existing budgets. Where the Planning Committee refuses an application against Officer advice, Members will be required to assist in defending their decision at appeal.

Where applicable as planning considerations, specific issues relating to sustainability and environmental issues, well-being of future generations, equalities impact and crime prevention impact of each proposed development are addressed in the relevant report in the attached schedule.

## **Financial Summary**

The cost of determining planning applications and defending decisions at any subsequent appeal is met by existing budgets and partially offset by statutory planning application fees. Costs can be awarded against the Council at an appeal if the Council has acted unreasonably and/or cannot defend its decisions. Similarly, costs can be awarded in the Council's favour if an appellant has acted unreasonably and/or cannot substantiate their grounds of appeal.

Three main risks are identified in relating to the determination of planning applications by Planning Committee: decisions being overturned at appeal; appeals being lodged for failing to determine applications within the statutory time period; and judicial review.

An appeal can be lodged by the applicant if permission is refused or if conditions are imposed. Costs can be awarded against the Council if decisions cannot be defended as reasonable, or if it behaves unreasonably during the appeal process, for example by not submitting required documents within required timescales. Conversely, costs can be awarded in the Council's favour if the appellant cannot defend their argument or behaves unreasonably.

An appeal can also be lodged by the applicant if the application is not determined within the statutory time period. However, with the type of major development being presented to the Planning Committee, which often requires a Section 106 agreement, it is unlikely that the application will be determined within the statutory time period. Appeals against non-determination are rare due to the further delay in receiving an appeal decision: it is generally quicker for applicants to wait for the Planning Authority to determine the application. Costs could only be awarded against the Council if it is found to have acted unreasonably. Determination of an application would only be delayed for good reason, such as resolving an objection or negotiating improvements or Section 106 contributions, and so the risk of a costs award is low.

A decision can be challenged in the Courts via a judicial review where an interested party is dissatisfied with the way the planning system has worked or how a Council has made a planning decision. A judicial review can be lodged if a decision has been made without taking into account a relevant planning consideration, if a decision is made taking into account an irrelevant consideration, or if the decision is irrational or perverse. If the Council loses the judicial review, it is at risk of having to pay the claimant's full costs in bringing the challenge, in addition to the Council's own costs in defending its decision. In the event of a successful challenge, the planning permission would normally be quashed and remitted back to the Council for reconsideration. If the Council wins, its costs would normally be met by the claimant who brought the unsuccessful challenge. Defending judicial reviews involves considerable officer time, legal advice, and instructing a barrister, and is a very expensive process. In addition to the financial implications, the Council's reputation may be harmed.

Mitigation measures to reduce risk are detailed in the table below. The probability of these risks occurring is considered to be low due to the mitigation measures, however the costs associated with a public inquiry and judicial review can be high.

<b>Risk</b>	<b>Impact of risk if it occurs* (H/M/L)</b>	<b>Probability of risk occurring (H/M/L)</b>	<b>What is the Council doing or what has it done to avoid the risk or reduce its effect?</b>	<b>Who is responsible for dealing with the risk?</b>
Decisions challenged at appeal and costs awarded against the Council.	M	L	Ensure reasons for refusal can be defended at appeal.	Planning Committee
			Ensure planning conditions imposed meet the tests set out in Circular 016/2014.	Planning Committee
			Provide guidance to Planning Committee regarding relevant material planning considerations, conditions and reasons for refusal.	Development and Regeneration Manager and Senior Legal Officer
			Ensure appeal timetables are adhered to.	Development and Regeneration Manager
Appeal lodged against non-determination, with costs awarded against the Council	M	L	Avoid delaying the determination of applications unreasonably.	Planning Committee  Development and Regeneration Manager
Judicial review successful with costs awarded against the Council	H	L	Ensure sound and rational decisions are made.	Planning Committee  Development and Regeneration Manager

\* Taking account of proposed mitigation measures

### Links to Council Policies and Priorities

The Council's Corporate Plan 2017-2022 identifies four themes, including the aim to be a Thriving City. In order to achieve this, the Council is committed to improving:

- jobs and the economy
- education and skills
- fairness and equality
- community safety and cohesion
- the environment, transport, culture and social well-being

Through development management decisions, good quality development is encouraged and the wrong development in the wrong places is resisted. Planning decisions can therefore contribute directly and indirectly to these priority outcomes by helping to deliver sustainable communities and affordable housing; allowing adaptations to allow people to remain in their homes; improving energy efficiency standards; securing appropriate Planning Contributions to offset the demands of new development to enable the expansion and improvement of our schools and leisure facilities; enabling

economic recovery, tourism and job creation; tackling dangerous structures and unsightly land and buildings; bringing empty properties back into use; and ensuring high quality 'place-making'.

The Corporate Plan contains the Council's Well-being Statement and well-being objectives, which contribute to the achievement of the national well-being goals. The Corporate Plan also links to other strategies and plans, the main ones being:

- Improvement Plan 2016-2018;
- Local Development Plan 2011-2026 (Adopted January 2015);

Under Section 38(6) of the Planning and Compulsory Purchase Act 2004 all planning applications must be determined in accordance with the Newport Local Development Plan (Adopted January 2015) unless material considerations indicate otherwise. Planning decisions are therefore based primarily on this core Council policy.

### **Options Available and considered**

- 1) To determine the application in accordance with the Officer recommendation (with amendments to or additional conditions or reasons for refusal if appropriate);
- 2) To grant or refuse planning permission against Officer recommendation (in which case the Planning Committee's reasons for its decision must be clearly minuted);
- 3) To decide to carry out a site visit, either by the Site Inspection Sub-Committee or by full Planning Committee (in which case the reason for the site visit must be minuted).

### **Preferred Option and Why**

To determine the application in accordance with the Officer recommendation (with amendments to or additional conditions or reasons for refusal if appropriate).

### **Comments of Chief Financial Officer**

In the normal course of events, there should be no specific financial implications arising from the determination of planning applications.

There is always a risk of a planning decision being challenged at appeal. This is especially the case where the Committee makes a decision contrary to the advice of Planning Officers or where in making its decision, the Committee takes into account matters which are not relevant planning considerations. These costs can be very considerable, especially where the planning application concerned is large or complex or the appeal process is likely to be protracted.

Members of the Planning Committee should be mindful that the costs of defending appeals and any award of costs against the Council following a successful appeal must be met by the taxpayers of Newport.

There is no provision in the Council's budget for such costs and as such, compensating savings in services would be required to offset any such costs that were incurred as a result of a successful appeal.

### **Comments of Monitoring Officer**

Planning Committee are required to have regard to the Officer advice and recommendations set out in the Application Schedule, the relevant planning policy context and all other material planning considerations. If Members are minded not to accept the Officer recommendation, then they must have sustainable planning reasons for their decisions.

### **Comments of Head of People and Business Change**

Within each report the sustainable development principle (long term, prevention, integration collaboration and involvement) of the Well-being of Future Generations (Wales) Act has been fully considered.

From an HR perspective there are no staffing issues to consider.

## Comments of Cabinet Member

The Cabinet Member for Regeneration and Housing has been made aware of the report.

## Local issues

Ward Members were notified of planning applications in accordance with the Council's adopted policy on planning consultation. Any comments made regarding a specific planning application are recorded in the report in the attached schedule

## Scrutiny Committees

None

## Equalities Impact Assessment and the Equalities Act 2010

The Equality Act 2010 contains a Public Sector Equality Duty which came into force on 06 April 2011. The Act identifies a number of 'protected characteristics', namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership. The new single duty aims to integrate consideration of equality and good relations into the regular business of public authorities. Compliance with the duty is a legal obligation and is intended to result in better informed decision-making and policy development and services that are more effective for users. In exercising its functions, the Council must have due regard to the need to: eliminate unlawful discrimination, harassment, victimisation and other conduct that is prohibited by the Act; advance equality of opportunity between persons who share a protected characteristic and those who do not; and foster good relations between persons who share a protected characteristic and those who do not. The Act is not overly prescriptive about the approach a public authority should take to ensure due regard, although it does set out that due regard to advancing equality involves: removing or minimising disadvantages suffered by people due to their protected characteristics; taking steps to meet the needs of people from protected groups where these differ from the need of other people; and encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

## Children and Families (Wales) Measure

Although no targeted consultation takes place specifically aimed at children and young people, consultation on planning applications and appeals is open to all of our citizens regardless of their age. Depending on the scale of the proposed development, applications are publicised via letters to neighbouring occupiers, site notices, press notices and/or social media. People replying to consultations are not required to provide their age or any other personal data, and therefore this data is not held or recorded in any way, and responses are not separated out by age.

## Wellbeing of Future Generations (Wales) Act 2015

The Well-being and Future Generations (Wales) Act seeks to improve the social, economic environmental and cultural well-being of Wales. Public bodies should ensure that decisions take into account the impact they could have on people living in Wales, in the future. The 5 main considerations are:

- Long term: Decisions made by the Planning Committee balances the need to improve the appearance of areas as well as meeting the needs of residents in order to make places safe to live in and encourage investment and employment opportunities. Planning decisions aim to build sustainable and cohesive communities.
- Prevention: Sound planning decisions remove the opportunity for anti-social behaviour and encourages a greater sense of pride in the local area, thereby giving the City potential to grow and become more sustainable.
- Integration: Through consultation with residents and statutory consultees, there is an opportunity to contribute views and opinions on how communities grow and develop, thereby promoting greater community involvement and integration. Planning decisions aim to build integrated and cohesive communities.
- Collaboration: Consultation with statutory consultees encourages decisions to be made which align with other relevant well-being objectives.

Involvement: Planning applications are subject to consultation and is regulated by legislation. Consultation is targeted at residents and businesses directly affected by a development, ward members and technical consultees. Engagement with the planning process is encouraged in order to ensure that the views of key stakeholders are taken into consideration.

Decisions made are in line with the Council's well-being objectives published in March 2017. Specifically, Objective 9 (Health and Well Being) of the adopted Newport Local Development Plan (2011-2026) links to this duty with its requirement to provide an environment that is safe and encourages healthy lifestyle choices and promotes well-being.

### **Crime and Disorder Act 1998**

Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. It is considered that there would be no significant or unacceptable increase in crime and disorder as a result of the consultation of these guidance documents.

### **Consultation**

Comments received from wider consultation, including comments from elected members, are detailed in each application report in the attached schedule.

## **Background Papers**

### **NATIONAL POLICY**

Planning Policy Wales (PPW) Edition 10 (December 2018)

Development Management Manual 2016

Welsh National Marine Plan November 2019

### *PPW Technical Advice Notes (TAN):*

- TAN 1: Joint Housing Land Availability Studies (2015)
- TAN 2: Planning and Affordable Housing (2006)
- TAN 3: Simplified Planning Zones (1996)
- TAN 4: Retailing and Commercial Development (2016)
- TAN 5: Nature Conservation and Planning (2009)
- TAN 6: Planning for Sustainable Rural Communities (2010)
- TAN 7: Outdoor Advertisement Control (1996)
- TAN 8: Renewable Energy (2005)
- TAN 10: Tree Preservation Orders (1997)
- TAN 11: Noise (1997)
- TAN 12: Design (2016)
- TAN 13: Tourism (1997)
- TAN 14: Coastal Planning (1998)
- TAN 15: Development and Flood Risk (2004)
- TAN 16: Sport, Recreation and Open Space (2009)
- TAN 18: Transport (2007)
- TAN 19: Telecommunications (2002)
- TAN 20: Planning and The Welsh Language (2017)
- TAN 21: Waste (2014)
- TAN 23: Economic Development (2014)
- TAN 24: The Historic Environment (2017)

Minerals Technical Advice Note (MTAN) Wales 1: Aggregates (30 March 2004)

Minerals Technical Advice Note (MTAN) Wales 2: Coal (20 January 2009)

Welsh Government Circular 016/2014 on planning conditions

Newport Local Development Plan (LDP) 2011-2026 (Adopted January 2015)

Supplementary Planning Guidance (SPG):

Affordable Housing (adopted August 2015)  
Archaeology & Archaeologically Sensitive Areas (adopted August 2015)  
Flat Conversions (adopted August 2015) (updated January 2020)  
House Extensions & Domestic Outbuildings (adopted August 2015) (updated January 2020)  
Houses in Multiple Occupation (HMOs) (adopted August 2015) (updated January 2017)  
New dwellings (adopted August 2015) (updated January 2020)  
Parking Standards (adopted August 2015)  
Planning Obligations (adopted August 2015) (updated January 2020)  
Security Measures for Shop Fronts and Commercial Premises (adopted August 2015)  
Wildlife and Development (adopted August 2015)  
Mineral Safeguarding (adopted January 2017)  
Outdoor Play Space (adopted January 2017)  
Trees, Woodland, Hedgerows and Development Sites (adopted January 2017)  
Air Quality (adopted February 2018)  
Waste Storage and Collection (adopted January 2020)

## **OTHER**

“Newport City Council Retail Study by Nexus Planning (September 2019) “ is not adopted policy but is a material consideration in making planning decisions.

The Economic Development Strategy is a material planning consideration.

The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017 are relevant to the recommendations made.

Other documents and plans relevant to specific planning applications are detailed at the end of each application report in the attached schedule



**APPLICATION DETAILS**

**No:** 19/0111      **Ward:** *SHAFTESBURY*

**Type:** **FULL (MAJOR)**

**Expiry Date:** **02-APR-2019**

**Applicant:** **ALDI STORES LTD.**

**Site:** **R. J. MASON TRANSPORT LTD, ALBANY STREET, NEWPORT, NP20 5NJ**

**Proposal:** **DEMOLITION OF BUILDINGS AND ERECTION OF CLASS A1 FOODSTORE WITH ASSOCIATED ACCESS, CAR PARKING AND LANDSCAPING**

**Recommendation: REFUSED**

**1. INTRODUCTION**

1.1 The proposal is to build an Aldi supermarket on the site of the former R.J. Mason Transport Yard in Crindau. The overall site area is 0.63Ha and is currently occupied by a large industrial style building and surrounding hardstanding. The existing building would be demolished and replaced by the store which will measure 64.5m by 32m (maximum dimensions). The building will provide:

- 1315m<sup>2</sup> of retail floor space
- 347m<sup>2</sup> of warehouse space
- 126m<sup>2</sup> of staff welfare space
- 105 parking spaces (5 disabled, 6 employee spaces and 2 motorcycle spaces)
- Delivery bay and circulation area

The building will have a mono-pitch roof with a maximum height of 8.2m at the front falling to 5.65m at the rear. The building will be typically 'Aldi' in appearance with a canopy over the front door and trolley store. Proposed materials are white render, timber cladding, dark grey roof panels, dark grey fascias and rainwater goods. Proposed access is direct from the Sainsbury's roundabout for customers and from Albany Street for deliveries.

1.2 The proposal would see the closure of the store at Barrack Hill which is within the Malpas Road District Centre and the relocation of the business to the new store which is outside any designated retail centre.

**2. RELEVANT SITE HISTORY**

<b>Ref. No.</b>	<b>Description</b>	<b>Decision &amp; Date</b>
<b>92/0511</b>	<b>PROPOSED PROVISION OF NEW ACCESS</b>	<b>Granted</b> <b>03 July 1992</b>
<b>07/1322</b>	<b>MIXED USE REGENERATION OF SITE INCLUDING RESIDENTIAL, STUDENT ACCOMMODATION, AND SHELTERED ACCOMMODATION FOR THE ELDERLY (CLASSES C2 AND C3); AN HOTEL (CLASS C1); COMMERCIAL BUILDINGS AND OFFICES (CLASS B1); A LOCAL CENTRE INCLUDING RETAIL, LEISURE AND HEALTHCARE FACILITIES (CLASSES A1, A2, A3, D1 AND D2); AND ASSOCIATED HIGHWAY AND FLOOD DEFENCE WORKS. (ACCOMPANIED BY AN ENVIRONMENTAL STATEMENT)</b>	<b>Withdrawn</b> <b>13 October 2011</b>
<b>14/0417</b>	<b>SCREENING OPINION FOR REDEVELOPMENT OF INDUSTRIAL LAND FOR RETAIL (APPROXIMATELY 3300 SQM OF A1 AND A3 USE)</b>	<b>EIA development</b> <b>10 June 2014</b>

14/0418	<b>SCOPING OPINION FOR REDEVELOPMENT OF INDUSTRIAL LAND FOR RETAIL (APPROXIMATELY 330 SQM OF A1 AND A3 USES)</b>	<b>Scoped 10 June 2014</b>
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### 3. POLICY CONTEXT

#### 3.1 Wales National Marine Plan (January 2020)

- GEN\_01: Sustainable Development
- GEN\_02: Proportionate Risk Based Approach
- SOC\_01: Access to the Marine Environment (analogous to Policy CE2 & CF4 of the NLDP);
- SOC\_07: Seascapes (analogous to Policies CE2 & SP8 of the NLDP);
- SOC\_08: Resilience to coastal change and flooding (analogous to Policies SP3 & GP1 of the NLDP);
- SOC\_11: Resilience to climate change (analogous to Policy GP1 of the NLDP);
- ENV\_01: Resilient marine ecosystems (analogous to Policy GP5 of the NLDP);
- ENV\_02 – Impact on Marine Protected Areas (analogous to policy GP5)
- ENV\_06: Air and water quality (analogous to Policy GP7 of the NLDP);
- ENV\_07: Fish Species and Habitats (analogous to Policy GP5 of the NLDP);
- GOV\_01: Cumulative effects (Appropriate Assessment & EIA Screening)
- GOV\_02: Cross-border and plan compatibility (Officer report)
- T&R\_01: Tourism and recreation (supporting) (analogous to Policies CF4, CF8, T5 & T6 of the NLDP).

#### 3.2 Planning Policy Wales Edition 10 (PPW10)

4.3.1 Retail and commercial centres are hubs of social and economic activity and the focal point for a diverse range of services which support the needs of local communities. They are highly accessible to different modes of transport and are the most sustainable locations for new development.

4.3.13 It is important that communities have access to adequate levels of retail provision. Evidence should demonstrate whether retail provision is adequate or not, by assessing if there is further expenditure capacity in a catchment area (quantitative need) or if there is a lack of retail quality, range of goods or accessibility (qualitative need).

4.3.14 In deciding whether to identify sites for comparison, convenience or other forms of retail uses in development plans or when determining planning applications for such uses, planning authorities should first consider whether there is a need for additional retail provision. However, there is no requirement to demonstrate the need for developments within defined retail and commercial centre boundaries or sites allocated in a development plan for specific retail uses. This approach reinforces the role of centres, and other allocated sites, as the best location for most retail, leisure, and commercial activities. It is not the role of the planning system to restrict competition between retailers within centres.

4.3.15 Need may be quantitative, to address a quantifiable unmet demand for the provision concerned, or qualitative. Precedence should be given to establishing quantitative need before qualitative need is considered for both convenience and comparison floorspace, particularly as a basis for development plan allocations.

4.3.17 It will be for the planning authority to determine and justify the weight to be given to any qualitative assessment. Regeneration and additional employment benefits are not considered qualitative need factors in retail policy terms. However, they may be material considerations in making a decision on individual planning applications if the regeneration and job creating benefits can be evidenced. If there is no quantitative or qualitative need for further development for retail and commercial centre uses, there will be no need to identify additional sites.

## Retail Impact Assessments

4.3.25 Retail developments outside designated retail and commercial centres, and which are not located on an allocated site, can impact on the viability and vibrancy of a centre. Impacts resulting from such development, whether individual or cumulative, may include changes in turnover and trading ability, consumer choice, traffic and travel patterns, footfall, as well as affect centre regeneration strategies and existing or proposed retail sites allocated in the development plan. The purpose of the retail impact assessment is to consider these issues and determine if these developments are likely to have detrimental consequences.

### 3.3 Technical Advice Notes

- TAN4 – Retail & Commercial Development
- TAN5 – Nature Conservation & Planning
- TAN16 - Sport, Recreation & Open Space
- TAN15 – Flooding
- TAN23 – Economic Development

### 3.4 Adopted Newport Local Development Plan 2011-2026

- 3.4.1 SP1 – Sustainability  
SP3 – Flood Risk  
SP4 – Water Resources  
SP8 – Special Landscape Areas  
SP17 – Employment Land  
GP1 – Climate Change  
GP2 – General Amenity  
GP3 – Service Infrastructure  
GP4 – Highways & Accessibility  
GP5 – Natural Environment  
GP6 – Quality of Design  
GP7 – Environmental Protection & Public Health  
CE1 – Routeways, Corridors & Gateways  
CE2 – Waterfront Development  
CE9 – Coastal Zone  
EM3 – Alternative Uses of Employment Land  
T2 – Heavy Commercial Vehicle Movements  
T4 – Parking  
R10 – New Out of Centre Retail Sites  
CF4 – Riverfront Access

### 3.5 Adopted Supplementary Planning Guidance

- Wildlife & Development
- Parking Standards

## 4. **CONSULTATIONS**

### 4.1 **CYFOETH NATURIOL CYMRU / NATURAL RESOURCES WALES (CNC/NRW):** Objects.

#### **Flood Risk**

We have reviewed the Flood Consequences Assessment (FCA) addendum (Technical Note dated October 2019, prepared by Craddys, referenced 10222w0005) to provide you with technical advice on the risks and consequences of flooding in accordance with Appendix 1 of Technical Advice Note 15 (TAN15).

The FCA and Technical Note have failed to demonstrate that the consequences of flooding can be acceptably managed in accordance with TAN15. The proposed development is not designed to be flood free in the 0.5% plus climate change allowance event (CCA), therefore does not meet the criteria in A1.14 of **Tudalen 19**

**Advice on flooding consequences:**

Our previous response advised an updated FCA is required, which provides the proposal's post-development levels (including the building and car parking). These levels should then be assessed against both the 0.5% CCA and 0.1% CCA events, stating development should be designed to meet A1.14 criteria, i.e. flood free in 0.5% CCA (year 2094).

The Technical Note (TN) has been informed by modelling and considers the effects of flooding when the flood defence is overtopped. The FCA and TN also provides predicted depths and velocities of flooding.

The modelling shows the period of overtopping is approximately 1.4 hours. It states that inundation at the site will be rapid (due to its location immediately behind the flood defence). The modelling shows the entire site inundated within approximately 15 minutes.

(Please note, we have not checked or verified the modelling to ensure it is representative of flood risk at this location. However, we are satisfied that we can advise you based on the modelling conclusions).

The Technical Note confirmed a finished floor level of 8m AOD, which has been subsequently raised further to 8.2m AOD in a note to the LPA received on 30/10/19. We have used this level to assess A1.14 criteria. The food store post-development is predicted to flood to 1.17metres. Specific post-development car parking levels have not been provided, however it can be ascertained from Table 1 in the TN that the lowest car park level would be 7.28m AOD, resulting in maximum depths of 2.09metres in the 0.5% CCA.

Post-development depths and velocities have been provided for the extreme 0.1% CCA event. These are set out in Table 1 of the TN and have been used to assess A1.15 criteria. These show that post-development, the maximum depths of flooding to the food store and site access are above the tolerable conditions under A1.15 criteria. The maximum flood velocities post-development for the food store are 0.29m/s which is above A1.15 criteria, however the maximum velocities at the site access are 0.28m/s which is within the relevant A1.15 criteria.

Therefore, based on this information, the site is predicted to flood over its lifetime (2094) in a 0.5% CCA flood event and therefore does not meet A1.14 criteria. We also advise you that criteria under A1.15 has not been met.

**Further advice on flooding consequences**

It should be noted that neither the FCA or TN have considered flood risk elsewhere. This requirement is under A1.12 criteria in TAN15 and the applicant should demonstrate that their proposals do not increase flooding beyond the development site.

We also note the FCA and TN states that the adjacent flood defences are constructed 'with the ability to be "topped up" to increase crest levels' and effectively the standard of protection. However, we advise you there is no guarantee the flood defences will be increased in the future.

The FCA and TN have discussed management and evacuation procedures. It states an evacuation procedure is to be put in place which includes developing a flood emergency plan to manage risk, subscribing to NRW's Flood Warning Service.

NRW provides warnings where it is technically possible, but this service must not be relied on to guarantee the timely and safe evacuation of occupants. Where available, the Flood Warning Service can be a useful means of alerting occupants who have voluntarily signed up to receive Flood Alerts and Flood Warning, enabling them to take action in advance of a flood event. New development's protection and resilience measures should not be wholly dependent on the Flood Warning Service.

We recommend you consider consulting other professional advisors on matters such as the applicant's evacuation procedures and any measures to address structural damage that may result from flooding. Please note, we do not normally comment on or approve the adequacy of flood emergency plans and procedures accompanying development proposals, as we do

not carry out these roles during a flood. Our involvement during a flood emergency would be limited to delivering flood warnings.

In summary, we object to the proposal as the food store and the wider site is predicted to flood during the 0.5% CCA event (year 2094) and therefore the proposal does not meet A1.14 criteria.

It is for you as the planning authority to be satisfied that the proposal is justified, and that the consequences of flooding are acceptable. Our role is to provide you with advice on the consequences.

### **Other Matters**

We remind you that other matters and advice provided in our letters for this proposal on 13 September 2019 and 5 March 2019 are relevant and should be considered in your determination.

Our comments above only relate specifically to matters included on our checklist, Development Planning Advisory Service: Consultation Topics (September 2018), which is published on our website. We have not considered potential effects on other matters and do not rule out the potential for the proposed development to affect other interests, including environmental interests of local importance.

We advise the applicant that, in addition to planning permission, it is their responsibility to ensure they secure all other permits/consents/licences relevant to their development. Please refer to our website for further details.

### **European protected species, Otter**

We welcome the submission of the above lighting plan. We advise that the lux levels and light distribution shown in the plan are sufficient to avoid a significant effect on otter, or other European protected species. Therefore, providing there is planning control to ensure these lighting levels are maintained and not exceeded for the lifetime of the development, we would have no objection in relation to the proposed lighting. The above referenced lighting drawing should therefore be included in the 'list of approved documents' condition, should other material considerations be satisfactorily addressed, and permission be granted.

### **Conditions 2 – 3: Designated Sites**

Our comments and request for conditions as set out in our statutory pre-application response remain.

We note that it appears the two existing outfalls will be used for the surface water discharge to the Pill and only the drainage pipes on site will be altered (with the car park drainage via an interceptor). We are satisfied with this. If any new surface water outfalls are proposed please reconsult us. We reiterate that only clean, uncontaminated surface water may be discharged to the Pill at any time. There must be no adverse impacts on water quality of the Pill or River Usk from this development.

The applicant should be made aware of the Duty of Care Regulations with regard to the use, disposal, transport and storage of waste material. Exemptions or permits may be required. This also applies to any contaminated material (including land remediation).

### **Habitats Regulations Assessment**

Our advice set out in our statutory pre-application response remains. Those suggested conditions are:

Condition 2: We would require the production of a Construction Environmental Management Plan (CEMP) including, but not limited to, details of working procedures (such as pollution mitigation measures, fuel/oil storage, waste storage, accident/emergency plan). We would recommend the LPA secure this by way of planning condition on any planning permission they are minded to grant.

Condition 3: There should be no discharge to the river during construction/demolition, unless NRW have been consulted and have given permission prior to the discharge taking place. Should there be a need for a potentially contaminated discharge (including silt/suspended solids) to the river, details of the methods of treatment would need to be submitted to ensure there is no deterioration of the receiving watercourse. A permit may be required. We would recommend the LPA secure this by way of planning condition on any planning permission they are minded to grant.

Reason: To protect the designated sites and prevent pollution of the water environment.

#### **Conditions 4-9: Land Contamination and Controlled Waters**

Our request for conditions as set out in our statutory pre-application response remains. We require these due to an unacceptable risk posed to controlled waters.

We have reviewed the Ground Investigation Report, prepared by earth Environmental and Geotechnical Ltd, Ref B0710/19 dated January 2019 and note the following would need to be addressed in relation to the discharge of condition 4.

- Identification of the likely contaminants that will have resulted from the previous site uses as a depot and chemical works. For example, which chemicals were being manufactured? Refer to the DOE Industry Profiles (1995) for guidance.
- Explain and justify the chosen exploratory locations for the site investigations. For example, was the site investigation targeted to likely source's such as the location of former tanks.
- Are there any intentions to undertake supplementary SI once the industrial unit has been demolished? This area of the site is lacking in exploratory locations, as demonstrated within Figure 8.
- It is noted in table 11 of the report there are no controlled waters S-P-R linkages discussed. This should be addressed.
- Justification of the sampling scheduling is required in line with the previous land use and what contaminants are expected to be identified on site.
- Provide some clarification around the selection of assessment criteria. We note that the following receptors were identified within section 4 of the report: o There is one historic groundwater abstraction license 26m southwest of the assessment site relating to general use.
- The nearest surface water feature is 4m southeast of the site which corresponds to the River Usk and Crindau Pill.
- Groundwater sampling demonstrates that there are hazardous and non-hazardous substances present in groundwater. These are present at concentrations in excess of EQS for surface water. It is apparent that sources of contamination remain within the unsaturated (soil) zone, as per section 9 of the report. It is likely therefore that there is continuing entry of hazardous and non-hazardous substances to groundwater. It is therefore essential that the tiered approach to land contamination as set out within CLR11 is followed and the applicant proceeds to the next level of assessment and considers remediation.
- The discussion(s) set out within section 12.3 of the report requires further justification.

The suggested conditions are:

**Condition 4:** Prior to the commencement of development approved by this planning permission (or such other date or stage in development as may be agreed in writing with the Local Planning Authority), the following components of a scheme to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the Local Planning Authority:

1. A preliminary risk assessment which has identified:
  - all previous uses
  - potential contaminants associated with those uses
  - a conceptual model of the site indicating sources, pathways and receptors
  - potentially unacceptable risks arising from contamination at the site.
2. A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
3. The site investigation results and the detailed risk assessment (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
4. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the express consent of the Local Planning Authority. The scheme shall be implemented as approved.



Reasons: Natural Resources Wales considers the controlled waters at this site are of high environmental sensitivity due to proximity to surface water and being located on a Secondary A aquifer. Contamination is known/strongly suspected at site due to historical contaminative uses.

Condition 5: Prior to [commencement of development]/ [occupation of any part of the permitted development] (delete as appropriate), a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a "long-term monitoring and maintenance plan") for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the Local Planning Authority.

Reasons: To demonstrate the remediation criteria relating to controlled waters have been met, and (if necessary) to secure longer-term monitoring of groundwater quality. This will ensure there are no longer remaining unacceptable risks to controlled waters following remediation of the site.

Condition 6: Reports on monitoring, maintenance and any contingency action carried out in accordance with a long-term monitoring and maintenance plan shall be submitted to the Local Planning Authority as set out in that plan. On completion of the monitoring programme a final report demonstrating that all long-term site remediation criteria have been met and documenting the decision to cease monitoring shall be submitted to and approved in writing by the Local Planning Authority.

Reasons: To ensure longer term remediation criteria relating to controlled waters have been met. This will ensure that there are no longer remaining unacceptable risks to controlled waters following remediation of the site.

Condition 7: If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted and obtained written approval from the Local Planning Authority for, an amendment to the remediation strategy detailing how this unsuspected contamination shall be dealt with.

Reasons: Given the history of the site it is considered possible there may be unidentified areas of contamination at the site that could pose a risk to controlled waters if they are not remediated.

Condition 8: No infiltration of surface water drainage into the ground is permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters. The development shall be carried out in accordance with the approval details.

Reasons: There is an increased potential for pollution of controlled waters from inappropriately located infiltration systems such as soakaways, unsealed porous pavement systems or infiltration basins.

Condition 9: Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater.

Reasons: There is an increased potential for pollution of controlled waters from inappropriate methods of piling.

#### 4.2 **GWASANAETH TAN & ACHUB / SOUTH WALES FIRE & RESCUE SERVICE:**

The proposed site plan in relation to the above has been examined and the Fire and Rescue Authority wish the following comments to be brought to the attention of the committee/applicant. It is important that these matters are dealt with in the early stages of any proposed development.

The developer should consider the need for the provision of:

- a. adequate water supplies on the site for firefighting purposes; and
- b. access for emergency firefighting appliances.

Should the applicant require further information in relation to these matters they should contact the above named fire safety officer.

#### 4.3 **WALES & WEST UTILITIES:** Advise of equipment in the area and safe working practices.



4.4 WESTERN POWER DISTRIBUTION: Advise of equipment in the area and safe working practices.

4.5 DWR CYMRU / WELSH WATER (DCWW): Advise conditions are applied to prevent connection of surface water / land drainage to the public sewerage system.

## **5. INTERNAL COUNCIL ADVICE**

### **5.1 HEAD OF STREETSCENE & CITY SERVICES (HIGHWAYS):**

5.1.1 Capita have been commissioned to undertake an assessment of the applicants Transport Assessment and have confirmed that there are no highway capacity issues associated with the proposed store. After initial comment and the applicant's consultant's response the following issues are still outstanding.

5.1.2 The fourth arm of the roundabout is in close proximity to the existing junction to the north, giving motorist little time to signal their intended manoeuvre. There is no entry deflection. The roundabout access crosses a footway/cycleway in close proximity to the roundabout. A single access/egress from Albany Road is preferred.

5.1.3 The Road Safety Audit highlights the potential lack of deflection for southbound vehicles on the Albany Street approach, with the potential removal of the splitter island (Problem 8.3). CD 116 Geometric Design of Roundabouts states: 'entry deflection is the most important factor for safety as it governs the speed of vehicles through the roundabout.'

5.1.4 The poor connection of the proposed site to the bus network is a concern and a modal change of only 4% in 5 years is not a significant challenge.

5.1.5 The 6m circulating width should not include the hatched area to the rear of the disabled spaces as per page 53 of Newport City Council's Supplementary Planning Guidance on Parking Standards adopted in August 2015.

5.1.6 Notwithstanding the above issues we have serious safety concerns relating to the provision of a fifth arm onto the existing roundabout and commissioned Capita to undertake a Safety Audit on the proposed changes to the roundabout which identified significant concerns over the proposed alterations to the roundabout.

5.1.7 Taking the above into consideration the proposed amendments are deemed to be unsafe and I must, therefore object to this application.

### **5.2 HEAD OF STREETSCENE & CITY SERVICES (ACTIVE TRAVEL):**

5.2.1 Whilst there is recognition of the National Cycle Network Route, there is no mention of how the access points of the proposed site will provide a safe avenue for users of the cycle route to access the site.

- i. How will the developers ensure that people actively travelling (walking and cycling) to the site will have a safe method of crossing Albany road, accessing the site and moving around within the boundaries of the proposed site?
- ii. Will the site include cycle storage for staff with changing facilities, in addition to customer cycle parking?

Such requirements are necessary, as per Newport's Local Development Plan, the Active Travel (Wales) Act and Newport's Well-being Plan.

### **5.3 HEAD OF STREETSCENE & CITY SERVICES (LANDSCAPING):**

5.3.1 The proposals front onto the River Usk Special Landscape Area. Development should not detract from the character of the Special Landscape Area. No information has been submitted to assess the impact the development type and density will have on the SLA or on views in from public areas.

- 5.3.2 Tree planting should be provided to the River Usk frontage to soften views of the building elevation from the opposite river bank open space, from elevated bridging points including M4, and closer views from adjacent housing and roads.
- 5.3.3 There is also an opportunity for development to enable public access to the River Usk frontage, continuing the cycleway and footway access further upstream and downstream, particularly as a number of plots (some under the same land ownership) are under review for development. This could be tied into an adequate buffer to the SAC and any NRW access requirements. Development should be fronting the river rather than turning away from it. This is a strategic issue for urban planning policy and design along the River Usk frontage through the city.
- 5.3.4 The proposed planting beds to the site boundaries are very narrow, not dimensioned but some likely to be only 1m width which will be further reduced once concrete foundations for kerbs are constructed.
- 5.3.5 The proposed planting beds are not as robust as those provided for the adjacent Sainsburys site. The impact of the narrow planting beds will result in open views of the building elevations and car parking, from the road frontage which includes Sustrans users, from the rear of Glass Works Cottages, and will be the focus of views when travelling down from Heidenheim Drive.
- 5.3.6 The above points were all highlighted at the pre application stage but have not translated into the submitted information.
- 5.3.7 The D&AS acknowledges this is a 'tight site', page 11.
- 5.3.8 Professional landscape architect input has provided a planting plan and maintenance/management plan. The M&M document is fine but there are issues with the limited areas of planting which are restricted by the densely developed site as follow:
- i. South (main frontage) boundary - no planting is proposed west of car park barrier; planting to east is low to medium height with no trees.
  - ii. West boundary onto future development plot – planting bed width is around 1m, low planting is proposed with no trees
  - iii. East boundary onto future development plot – only some of boundary is planted (low species) and no trees are proposed
  - iv. North boundary onto River Usk with views from public park opposite – narrow band of native planting at density of 1 per square meter is proposed, only 2 trees (field maple).

The 'conservation grass areas' are not shown on the plan.

- 5.3.9 The comments raise concerns from strategic design to detailed design.

#### 5.4 **HEAD OF REGENERATION, INVESTMENT & HOUSING (PLANNING POLICY):**

##### **LDP DESIGNATIONS**

- The site is located within the settlement boundary.
- The site is located within Parking Zone 5.
- The site is located within Flood Zone C1.
- National Cycleway runs along the edge of the River Usk.
- The site is located adjacent to the River Usk Special Landscape Area (SLA).
- The site is adjacent to River Usk Special Area of Conservation (SAC), Site of Special Scientific Interest (SSSI) and Site of Importance for Nature Conservation (SINC)

- 5.4.1 This application is for a new Aldi foodstore which is intended to replace the existing Aldi that is currently located at Barrack Hill. The store at Barrack Hill is part of the Malpas Road District Centre. The existing store has a sale area of approximately 650sqm. The supporting documentation states that this store is less than half the size of a modern Aldi store.

- 5.4.2 The proposed new store in Crindau would be considered out of town. The site is brownfield, currently comprising of an industrial unit/sur generis commercial vehicle parking. It would have a sales area of 1,315sqm (gross internal area of 1,788 sqm).

- 5.4.3 This proposal would be a large scale retail scheme outside of a defined centre. Consequently, the applicant must satisfy Policies SP19 and R10 of the Newport LDP:
- 5.4.4 The applicant has submitted a retail assessment as part of their planning application which aims to address the above criteria.

**i) NEED IS IDENTIFIED**

Quantitative Need

- 5.4.5 An assessment has been undertaken which adopts 2018 as the base year and considers retail need and impact to 2023. The applicant has used the same catchment zones that were used for the recent Lidl planning application (18/0787). They are focusing their catchment area on Zones 2, 5, 6 and 7.
- 5.4.6 Through a household survey (the same used by the Lidl application), the assessment identifies where people living in the zones shop, and then highlights the market share that each store receives. The stores in zones 2, 5, 6 and 7 are currently estimated to attract £134.23m of convenience goods expenditure. This is in accordance with table 7 (should be renamed to table 8) within the applicant's submission. The 2018 available expenditure within these same zones is £190.9m. Therefore this represents a retention rate of just over 70%. In other words, 30% of people living within zones 2, 5, 6 and 7 are shopping outside of these zones. Using assumptions on floorspace and turnover, the retail assessment sets out a benchmark turnover of convenience goods stores in zones 2, 5, 6 and 7. The benchmark turnover considers the size of stores and uses a standard company ratio multiplier to estimate their expected turnover, which ultimately establishes whether they are operating at capacity, below capacity or above. The evidence is suggesting that total convenience goods stores in these zones have a benchmark turnover of £144.05m.

Current Expenditure in zones 2, 5, 6 and 7	£134.23m
Benchmark turnover of convenience goods stores in zones 2, 5, 6 and 7	£144.05m
Residual expenditure in zones 2, 5, 6 and 7	-£9.82m

- 5.4.7 Based on the above figures submitted by the applicant and if the retention rate of 70% is maintained, there is currently a surplus of convenience goods floorspace in zones 2, 5, 6 and 7. Consequently there would be no quantitative justification for any new floorspace.
- 5.4.8 The surplus of convenience goods floorspace would be increased further if the new Iceland and new Lidl in zones 5 are properly factored in along with the proposed new Aldi store at Albany St. The assessment makes some attempt to factor in these stores, but notes that the Lidl turnover is only estimated at £0.96m. This is a significant under estimate. It should be in the region of £9-10m. In addition, the turnover of the proposed new Aldi store is only counted as £5.57m. This is because only the uplift in turnover from the old store to the new store has been counted. The assessment cannot simply count the uplift in the turnover because if the new proposed store is approved, this will have a turnover in the region of £21m, but the old Barrack Hill store will still have an A1 consent and could still potentially be trading with a turnover of around £15m. Therefore, the figures in Table 9 are misleading and considered to be gross underestimates. The applicant even acknowledges in paragraph 8.7 the new proposal will provide 40 jobs, but the existing Barack Hill store is also likely to be occupied by another retailer generating additional jobs. The benefits of the increase in jobs is a positive, but it cannot be considered without acknowledging the fact that the Barrack Hill store will still be in operation.
- 5.4.9 Table 9 also includes an expenditure inflow figure which the applicant has used to justify their quantitative need. The expenditure inflow is the estimated expenditure from zones 1, 3 and 4 that is spent in the catchment area (zones 2, 5, 6 and 7). The use of this expenditure inflow figure is questionable. It appears that the applicant is mixing and matching zones to benefit their position.

5.4.10 In summary, it is believed that quantitative need has not been demonstrated. There is currently a surplus of convenience goods floorspace in the proposed store's catchment area (zones 2, 5, 6 and 7). It is believed that this surplus is greater than quantified because the new Lidl store's turnover has not been recorded correctly, and as only the uplift turnover for the new Aldi has been factored in, the figures have been significantly underestimated. The use of the expenditure inflow figure is also questioned. The 2023 figures show no major changes to the 2018 figures, but as the 2018 figures are considered to contain flaws, the 2023 figures will do as well.

#### Qualitative Need

5.4.11 There is little provided in terms of qualitative need. A larger store is desired to cater for modern business and the applicant states that the new facility will enable local choice by allowing a discount foodstore operator to continue to compete with the larger superstores present in the catchment.

**ii) THE PROPOSED DEVELOPMENT WOULD NOT, EITHER IN ITS OWN RIGHT OR CUMULATIVELY WITH OTHER OUT OF CENTRE DEVELOPMENTS, HAVE AN ADVERSE EFFECT ON DEFINED RETAIL CENTRES AS A CONSEQUENCE OF THE TYPE OR RANGE OF GOODS SOLD;**

5.4.12 Table 10 evidences the estimated impact the proposed new store would have on other stores, and in particular, whether they would impact on a defined retail centre. As the calculations appear to have only counted the uplift from the old store to the proposed new store, caution should be applied. The assessed impact should be from a proposed new Aldi store with the assumption that the Barrack Hill store is still functioning. If only the uplift has been considered, which appears it has, then the impacts on the defined local centres will be underestimated.

5.4.13 On the evidence provided by the applicant, the impact on defined retail centres is as follows:

City Centre	No impact
Caerleon District Centre	-1.2% (Sainsburys Local)
Commercial Rd District Centre	-1.9% (Asda)
Newport Retail Park	-2.1% (Tesco Extra)

5.4.14 The rest of the impact would be on stores classified as out of town. The Sainsbury's on Albany Street is predicted to suffer a 10.7% loss in turnover, which is the largest impact. There is no national or local policy to protect stores which are out of town.

5.4.15 As quoted above, there is no impact on the City Centre, which considering the location of the store, is considered realistic. There is however some impact on District Centres. The impact reported in the applicant's submission is likely to be underestimated.

**iii) THE LOCATION IS ACCEPTABLE IN SEQUENTIAL TERMS, OR THE PROPOSAL INVOLVES THE RELOCATION OF AN EXISTING OUT OF CENTRE RETAIL FACILITY TO A SEQUENTIALLY ACCEPTABLE SITE WHERE AGREEMENTS CAN CONTROL FUTURE RETAIL USES ON THE VACATED LAND;**

5.4.16 A sequential assessment has been undertaken for the proposal which concludes that the application site is the only site suitable, available and viable for the foodstore proposed.

5.4.17 The application proposal is for a food retail store with 1,315sqm net sales area and a minimum of 100 parking spaces. The size of the site to accommodate such a store would be approximately 0.7 hectares.

5.4.18 The applicant has used the same catchment areas that were used for the recent Lidl planning application (18/0787). They are the same as the catchment area on Zones 2, 5, including parts

of zones 6 and 7. They have assessed City Centre and District Centres within these zones, along with edge of centre locations.

5.4.19 No appropriate sites of 0.7ha have been located within the city centre or edge of the city centre. The existing site within the Malpas Road District Centre is too small and considered no longer fit for purpose and is the drive for this application. It is concluded that there are no alternative sequentially preferable sites within the city centre or district centre (included edge-of centre locations) within the desired catchment area. Considering the applicant's spatial requirements, it is accepted that there are unlikely to be any alternative sites in sequentially preferable locations.

**iv) THE SURROUNDING HIGHWAY AND TRANSPORTATION NETWORK HAS CAPACITY TO SERVE THE DEVELOPMENT, AND THAT ACCESSING AND SERVICING ARRANGEMENTS CAN BE ACCOMMODATED IN A SATISFACTORY MANNER;**

**v) THE PROPOSAL IS FULLY ACCESSIBLE ON FOOT, BY BICYCLE AND BY PUBLIC TRANSPORT.**

These two points will need to be addressed by the Council's Highways Department.

### **EM3 – Alternative Uses of Employment Land**

5.4.20 The applicant states that they do not consider the land to be in a 'B' use and this was confirmed during a pre-application meeting. If this is the case, then Policy EM3 does not need to be considered. However, if there are B uses on site, then the policy will need to be addressed.

### **Flood Risk**

5.4.21 The site is located within Flood Risk Zone C1. An FCA has been submitted which concludes that the development can satisfy the TAN 15 tests and is not at risk of flooding over a 75-year period. Natural Resources Wales will provide further comment on this matter.

### **Ecology**

5.4.22 The site is located directly adjacent to international, national and local ecological designations. The proposed uses do have the potential to affect these designations. Full comments will be provided by the Council's ecology officer on these matters.

### **Conclusion**

5.4.23 A number of points have been raised in this response that will require further investigation by the applicant. The applicant believes they have clearly demonstrated quantitative and qualitative need. This is challenged. From the figures presented, there appears to be surplus of convenience goods space in the proposed new stores catchment area. Consequently, it is considered that quantitative need has not been demonstrated. Figures used for the recently approved Lidl also appear to be incorrect and the applicant has only factored in the uplift in turnover from the existing store to the proposed new store. This is considered to be misleading. The Council is powerless to prevent a competitor from occupying the Barrack Hill store and this is something that has not been fully addressed in the applicant's submission. This uplift also affects the figures presented on the impact the new store would have of existing retail centres, and therefore the impacts could be underestimated.

5.4.24 Further clarification and discussion is required with the applicant to understand the full impact of the proposed development before a final recommendation can be made.

5.5 **HEAD OF STREETSCENE & CITY SERVICES (ECOLOGY): Further information required prior to determination**

- 5.5.1 The site is adjacent to the Crindau Pill SINC which is known to support protected species including otter, and is likely to be an important foraging corridor for bats. The lighting scheme submitted does not demonstrate satisfactorily that the light spill on the water course will be controlled, and a revised lighting plan is required. Please see comments from NRW in their PAC response dated 19/12/18 for the level of information required.

#### **Information which could be secured with pre-commencement conditions**

- 5.5.2 The following information could be submitted prior to determination, but would also be suitable to be secured with pre-commencement conditions.

There is potential for protected species to pass through the site at night, and potential risk to interest features of the River Usk SAC during the construction phase of the development. To control risk during the construction a Construction Environmental Method Statement (Biodiversity) will be required, to be written in line guidance in British Standard 42020:2013, and include at minimum:

- a) Risk assessment of potentially damaging construction activities;
- b) Identification of "biodiversity protection zones";
- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);
- d) The location and timing of sensitive works to avoid harm to biodiversity features;
- e) The times during construction when specialist ecologists need to be present on site to oversee works;
- f) Responsible persons and lines of communication;
- g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person; and
- h) Use of protective fences, exclusion barriers and warning signs.

#### **Habitat Regulations Assessment**

- 5.5.3 The application site is within 100m of River Usk SAC. The application should be screened for likely significant effects to the SAC, and an appropriate assessment may be required by Regulation 61 of the Conservation of Habitats and Species Regulations 2017.

## **6. REPRESENTATIONS**

### **6.1 NEIGHBOURS:**

- 6.1.1 All properties within 50m of the application site were consulted (15 properties) and a site notice was displayed. Two responses were received raising the following points:

- There will be vibration damage from passing heavy vehicles and construction activities.
- There will be dust pollution dirtying my property and preventing the enjoyment of my garden.
- Disturbance from weekend working and at early hours.
- There should be pre and post construction surveys of neighbouring houses so appropriate compensation can be paid.

- 6.1.2 Sainsbury's Supermarkets Limited: Strongly objects for the following reasons;

1. Lack of quantitative and qualitative retail need for a new foodstore:

- the catchment of the new store has not been robustly identified;
- only the increase in floor area over the old store has been considered rather than the entire new floor area;
- there has been no consideration on the provision of 'comparison' floorspace with a turnover of £2.68million in 2023 – this is a significant omission;
- no qualitative need for the new store is robustly demonstrated,
- national policy tests are failed.

2. Failure to comply with the **Guideline 30** site selection:

- There has been no effort to assess if the existing Aldi store can be extended / adapted thereby allowing the Aldi store to stay in centre.
  - It is not evident there has been an 'on-ground' assessment of other potential in-centre locations the relocated store might occupy.
3. Retail impact on Malpas Road District Centre:
- The existing Aldi store is within the Malpas Road District Centre;
  - The submitted Retail Assessment suggests the withdrawal of Aldi from the District Centre would result in the loss of £11.91million in convenience expenditure leaving £204,700 being spent in the retained convenience stores. The submitted assessment makes no consideration of any re-occupation of the vacated unit for either convenience or comparison goods retailers so it can be safely concluded (as it has been by the applicant) that "Impacts associated with the proposal in the design years (2018 and 2023) are low and represent no threat to the vitality and viability of the existing centres" (para 7.69).
  - The proposal entirely counteracts the thrust of the town centre first approach and should be refused on the grounds of retail impact.
4. Lack of sufficient levels of customer car parking:
- The SPG requirement for parking is 1 space per 14 square metres which equates to 128 spaces. Only 102 spaces are provided including 6 staff spaces. The inadequacy will lead to on-street parking or use of the neighbouring Sainsbury's carpark.
  - There is no provision for cycle parking.
  - This site is car dependent and less sustainable.

## 7. ASSESSMENT

### 7.1 The Site

7.1.1 The site comprises the current R. J. Mason transport yard covering an area of 0.63Ha. The site is level with a large area of hardstanding and includes a large 'industrial' type building with a footprint of approximately 80m by 45m (maximum extents). The site appears to have a lawful use as a haulier's yard (sui generis) with some associated storage within the building and ancillary services.

7.1.2 The site also appears to be currently being used as a 'truck stop' providing an area for trucks to park and for the drivers to rest up in a secure place as well as general haulage use. A café (Blair's Diner) provides hot food and booking in facilities for drivers. A hand carwash was also operating at the time of the site visit.

7.1.3 The site lies within the urban boundary within flood zone C1 (defended flood plain). Cyfoeth Naturiol Cymru have recently completed flood defence works on the site perimeter to provide a sheet piled floodwall along Crindau Pill. The Pill forms part of the River Usk SSSI / SAC and has significant nature conservation interest. The site is in Parking Zone 5. Current access to the site is from Albany Street with there being separate in / out accesses.

### 7.2 The Proposal

7.2.1 The site would be cleared and redeveloped to provide a new Aldi supermarket as described in Paragraph 1.1. The building will be set back from Albany Street tight to the Pill close to the recently completed floodwall.

### 7.3 Key Issues

The key issues are:

- Retail need; quantitative and qualitative
- Sequential Test
- Retail Impact
- Flooding

- Bio-diversity / Appropriate Assessment
- Parking / Access / Circulation
- Design
- Riverfront Access
- Regeneration Benefit / Employment

Minor Issues are:

- **Impact to residential amenity during the construction process.**

#### 7.4 Retail Need

7.4.1 The site for the new store is located outside of any retail centre designated in the Newport Local Development Plan. In such locations it is necessary to show that there is sufficient need to justify the provision of a retail unit outside of a designated centre. Consideration should then be given to whether an appropriate site was available within a centre and the impact of the proposed store on any existing centre. Recent caselaw (*Waterstone Estates Limited v. The Welsh Ministers*) has established the primacy of the need test within Wales.

7.4.2 To prove need the applicant must identify a store catchment calculate the available retail expenditure within that catchment and compare that with the existing retail provision within that catchment and identify any shortfall that can serve the proposal. The overall methodology is well established but can be subject to interpretation and certain levels of assumption. In this case the applicant has considered the uplift in the floor area of the new store over the existing Aldi store within the Malpas Road District Centre and has sought to justify the provision of this 'additional' floor area only rather than the entirety of the new space.

7.4.3 To a large extent the applicant has relied upon the retail study prepared for application 18/0787 for the Lidl's store proposed on Cardiff Road. In that case Lidl were relocating from their store on Mendalgief Road to the former site of the South Wales Argus. That is from one out of centre location to another. Lidl identified retail catchments within the city and these have been adopted for the purposes of this application.

7.4.4 The applicant has provided a retail assessment which has been audited by Nexus who recently completed the Council's new Retail Study (November 2019).

Identifying if there is a quantitative need for a new store is a stepwise process:

Key Data	Applicant's Data	Comment
Defined Catchment	Essentially north west Newport as far as the M4, Bettws & Rogerstone and Eastern Newport and the surrounding rural hinterland	Areas of East Newport are supported by in catchment stores including the Aldi on Nash Road, Morrisons, Newport Retail Park (Spytty) or would pass intervening stores such as Asda (Lower Dock Street) and the Lidl's on Usk Way.
Estimate of the available expenditure within the catchment at the time the store will open in 2023	£192.55 million	Based on catchment population and typical expenditures
Estimate the level of convenience retail provision within the catchment in 2023 (Benchmark Turnover)	£146.95 million	Based on sales area and typical 'take' per square metre
Estimate the level of convenience retail spend within the catchment in 2023	£158.97 million	Assumed inflow of expenditure into catchment of £22.94 million (29%) of all expenditure
Available additional money to spend on convenience goods in 2023	£12.92 million (£158.97-£146.95)	Headroom to support new retail provision



Additional Retail Provision Provided by the Development in 2023	£5.68 million i.e. less than £12.92 million – sufficient expenditure is available to support the new store	Based on <u>increase</u> in floor area of the new store above the old store.  If the total area of the new store is considered then there is insufficient expenditure available to support the new store.
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7.4.5 Nexus were instructed by the Council to assess the applicant's Retail Statement and in the first instance broadly concluded that sufficient demand (quantitative need) to support the retail proposal had not been shown. Primarily Nexus critiqued the methodology that the applicant had used but did not conclusively state there was no demand in quantitative terms for the new store just that the flawed methodology could not be relied upon. The applicant subsequently sought to clarify their methodology in an attempt to secure agreement with the Council's advisors. This took the form of a letter describing the methodology used in more detail and concluded that sufficient quantitative need for the store existed dependent on acceptance of the chosen methodology as well as outlining qualitative benefits of the new store. Nexus undertook further evaluation of the amplified retail information and in turn concluded:

- Quantitative need has not been demonstrated and there is a significant oversupply of convenience retail floorspace in Newport;
- The Barrack Hill store is overtrading but not unusually so for a discount retailer;
- The qualitative need is not well made out in relation to the criteria set out in PPW10;
- The site is out of centre and not well served by public transport;
- Closure of the Barrack Hill store would result in the loss of £17.8m of expenditure (2019 figures) within the Malpas Road District Centre and the loss of the only significant food store within the District Centre;
- The Newport Local Development Plan examination has confirmed the importance of Discovery Park to the District Centre and the 'anchor store' role of Aldi's within that centre;
- It is likely that the Barrack Hill store will be occupied by a comparison retailer with a reduced turnover compared to Aldi and lessening the centre's offer and fundamentally weakening its wider function;

In short Nexus conclude there is no quantitative demand for the new store, qualitative benefits are limited and that there would be an unacceptably adverse impact on the Malpas Road District Centre.

7.4.6 In policy terms Planning Policy Wales, Edition 10 (PPW10) states at Paragraph 4.3.14 that:

*In deciding whether to identify sites for comparison, convenience or other forms of retail uses in development plans or when determining planning applications for such uses, planning authorities should first consider whether there is a need for additional retail provision<sup>1</sup>. However, there is no requirement to demonstrate the need for developments within defined retail and commercial centre boundaries or sites allocated in a development plan for specific retail uses. This approach reinforces the role of centres, and other allocated sites, as the best location for most retail, leisure, and commercial activities. It is not the role of the planning system to restrict competition between retailers within centres.*

Further pertinent advice is at Paragraphs 4.3.15:

*Need may be quantitative, to address a quantifiable unmet demand for the provision concerned, or qualitative. Precedence should be given to establishing quantitative need before qualitative need is considered for both convenience and comparison floorspace<sup>2</sup>, particularly as a basis for development plan allocations.*

<sup>1</sup> Officer's emphasis

<sup>2</sup> Officer's emphasis

National Policy is very clear that need is the key consideration when assessing out of centre retail applications. As noted, in this case quantitative need has not been robustly shown and this Policy test is failed.

7.4.7 National Policy also allows justification for new out of centre retail on qualitative need. PPW10 advises at Paragraph 4.3.16 as follows:

*Qualitative assessment should cover both positive and negative aspects and may become an important consideration where it:*

- i. supports the objectives and retail strategy of an adopted development plan or the policies in this guidance;*
- ii. is highly accessible by walking, cycling or public transport;*
- iii. contributes to a substantial reduction in car journeys;*
- iv. contributes to the co-location of facilities in existing retail and commercial centres;*
- v. significantly contributes to the vibrancy, attractiveness and viability of such a centre;*
- vi. assists in the alleviation of over-trading of, or traffic congestion surrounding, existing local comparable stores;*
- vii. addresses locally defined deficiencies in provision in terms of quality and quantity, including that which would serve new residential developments; or where it;*
- viii. alleviates a lack of convenience goods provision in a disadvantaged area.*

7.4.8 In this case the proposed site is not allocated and the development would not support any local retail strategy or the centre first stance supported by PPW10. As a site it would be walkable from adjacent areas of Crindau but not wider areas due to the presence of Heidenheim Drive and the River effectively limiting pedestrian routes to the site. A bus service operates from the city centre to the Sainsbury's store near the application site between 09:30 and 13:10 and customers can walk through to Albany Street from the drop off point, however this is a private service provided by Sainsburys although a degree of piggy backing might be anticipated. There is no service bus accessing Crindau and people would need to get off the bus on Malpas Road and walk through the limited overbridges / underpasses that cross the A4042 (Heidenheim Drive) and then walk some distance to the store along Albany Street. None of these are welcoming routes. The site is adjacent to Cycle Route 88 from the city centre to Caerleon by way of Crindau. As such cycle access is possible but the route is not in reality car free. Some northern elements near the site have a combined footpath / cycle way but elements to the south are on road since footpaths are narrow and houses access directly onto the pavement. This section of Albany Road is relatively narrow, heavily parked and subject to HGV traffic. It is not a welcoming route for cyclists. The alternative via Ailesbury Street and the Sainsbury's site is also not car free and is somewhat contrived. Although lacking through traffic it is also heavily parked and not particularly welcoming. In effect the routes are typical of retro-fitted cycle routes being at best adequate and frequently interrupted requiring cycling on roads that are vehicle dominated and therefore not especially attractive to cycle traffic particularly children or more timid riders. As such Officers conclude that the site would fail the Policy test since it is not highly accessible on foot or on the bus and bicycle access is not as good as it would appear on paper. This is to be expected given its out of centre location.

7.4.9 The site will not substantially reduce car journeys being off a bus route and even combined trips between the proposed store and the adjacent Sainsbury's store are likely to involve vehicles moving from one car park to another. The applicant estimates 5% of all trips to the new store will be such trips. As such increased car movements can be anticipated. The applicant's Transport Technical Note (June 2019) anticipated 20% of trips to the store would be new trips within the local road network with 50% being diverted from the Barrack Hill store and the remaining 30% being existing passers-by. However it should be noted that the 50% diversion figure was predicated on the existing store continuing to trade as a convenience goods store. The applicant now considers that the existing store will not trade in such a way and will more likely become a comparison goods outlet. As such the diversion to the new store is likely to be higher than anticipated initially and it seems likely this additional diversion will be in addition to the 'new' traffic expected to visit the store. That is to say the new store is likely to generate even more car trips than initially modelled.

7.4.10 The proposed site is outside an existing retail centre so no co-locational benefits accrue and nor would this proposal add to the vitality and viability of an existing centre.

- 7.4.11 The GVA study provided as part of the application for the Lidl store on Cardiff Road (former Argus site) suggests the 2018 turnover from within the identified catchment of the existing Aldi store at Barrack Hill is £12.66million with a further £2.86million flowing in from non-catchment areas. The applicant's Retail Statement suggests that a benchmark turnover for the existing Aldi store is £6.34million. This suggests that the existing store is overtrading by approximately 245% i.e. selling a lot more goods than it might be expected to sell given the size of the store. Trading from a larger store would enable Aldi to alleviate the overtrading and provide a wider range and choice of goods to customers from the increased floor space, potentially improving the overall shopping experience (aisle width, till wait time and so forth). However there is no indication that the current overtrading is causing any wider adverse environmental or amenity concerns. The current store trades in a modernish unit on a custom built trading estate (Discovery Park) built in the 1990s / very early 2000s which is accessed from a major road junction and has a large area of parking. The retail park orientates towards the main road and has no real engagement with neighbouring residential properties. It has a thoroughly commercial character at odds with the older parts of the Malpas Road District Centre. There is no evidence that the current situation is causing any adverse impact to amenity, highway function, car parking or any other matter of significant interest. As such the key qualitative benefit would be enhanced range and choice of goods within the proposed store and a potentially enhanced shopping experience for customers.
- 7.4.12 There are no new residential developments within the vicinity of the site but there are allocations at the former Sainsburys site H1(32) and the former Queens Hill School site H1(62) relatively close to the proposed site and certainly within its catchment. However the Council's Retail Study of November 2016 notes that the existing large grocery stores including the Sainsbury store on Albany Street are under trading. The Retail Study does confirm that the Aldi at Barrack Hill is overtrading as noted above. The Retail Study concludes that Newport currently has an overprovision of convenience retail and this will continue to be the case up until 2029 even allowing for population growth and housing allocations within the city. As such no local deficiency including for new or proposed residential development can be identified and no additional convenience retail provision can be justified under this criterion. The applicant points to rapid growth in the 'discounter' retail section and points to shortfall of provision within this segment of the market resulting in over-trading at the existing Barrack Hill store. However this has already been addressed as part of the consideration of qualitative need.
- 7.4.13 The proposed store site is in Shaftesbury which is in the lowest quintile of deprived wards in Newport as is neighbouring Bettws. However other wards within the identified catchment are more affluent including wards which are in the least deprived quintile. There is no reason to think that the identified catchment is especially deprived and as noted no shortfall in local retail provision can be identified in any case. Shaftesbury has ready access to the existing stores within the Malpas Road District Centre and the existing Sainsbury's store. There is no lack of convenience provision within a disadvantaged area that the proposal might address.
- 7.4.14 In terms of the qualitative need tests identified in PPW10 the proposal fails in all but the alleviation of undertrading at the existing Barrack Hill store but as noted the negative effects of this are limited to a curtailment of the range of good the store can stock and potentially some adverse impact in shopper experience in terms of circulation space within the store and queue times. As such the qualitative benefits of the scheme are slight. PPW10 confirms it is for the planning authority to determine and justify the weight to be given to any qualitative assessment (Paragraph 4.3.16) and in this case qualitative benefits are clearly limited when assessed against the battery of tests advised in PPW10.
- 7.4.15 Recent caselaw (Waterstone Estates Limited v. The Welsh Ministers) has established the primacy of the need test within Wales. Under that case of June 2018 the Appeal Court concluded at Paragraph 78 of its decision that:

*The policy document (PPW9) has to be read broadly; and, in my view, for the construction of the first sentence of paragraph 10.2.9, the fact that need has to be considered "first" is more telling than the exegetical<sup>3</sup> point Mr Lewis made in reply. Looked at broadly and in its proper*

<sup>3</sup> critical explanation or interpretation of a text

*context, in my view paragraph 10.2.12 firmly indicates that, outside centres, need is a discrete requirement for planning applications; and, if it is not satisfied, then there is no requirement (or "need") to proceed to consider whether there is any sequentially preferable site.*

- 7.4.16 Planning Policy Wales Edition 9 (PPW9) has now been superseded by PPW10 but planning and legal officers have assessed the changes and have concluded that there has been no fundamental change in national policy on retail and that the findings of the court hold good. This means if need cannot be identified then there is no requirement to proceed to the other retail tests of sequentially preferable site or retail impact. No need either quantitative or qualitative (on-balance) has been identified in this instance and the proposal is contrary to national policy which is designed to protect existing centres.
- 7.4.17 Local policies SP19 & R10 which address retail applications requires that need be shown if a proposal is outside a designated retail centre. None has been shown in this case and so these Policy tests are failed in part, although both are criteria based policies with several criteria against which applications are to be assessed.
- 7.4.18 In terms of need the proposal contravenes both local and national policy since need has not been shown.

## 7.5 Sequential Test

- 7.5.1 Although caselaw has established that if need for a retail proposal is not shown there is no requirement to undertake the other retail tests the other tests will be considered for completeness.
- 7.5.2 National policy allows for the application of a sequential test in the event that need is identified. The purpose of this is to clarify whether locations within or next best adjacent to existing centres can accommodate the proposed development. Failing that out of centre locations can be considered. The purpose of the policy is to support and enhance existing retail centres. This is also reflected in local policy where SP19 requires the sequential test to be applied to all retail locations outside of the city centre and Policy R10 which requires locations to be acceptable in sequential terms.
- 7.5.3 In application of the test it is for the applicant to robustly show that no more appropriate site is available or suitable. Caselaw requires a degree of flexibility is shown in site assessment in order to prevent an applicant setting such a stringent requirement that only their chosen site could ever meet it. In this case the applicant has considered the Aldi store format and the likely parking generation and has concluded that no in-centre site within the identified catchment is suitable or available. The Nexus assessment of the application broadly agreed but identified the former Sainsburys site at Pugsley Street as a possible site for the proposed store. This site has been cleared recently and has permission to be developed for a mixed use development consisting primarily of student accommodation and residential units. That development appears to have stalled and there appears to be highly limited commercial interest in bringing that scheme forward. When Sainsburys vacated that site they signed a Section 106 legal agreement that precluded them from trading from that site but officers assess that there is no impediment to another supermarket firm occupying the site. The site is cleared and is being marketed and could potentially be used to provide the proposed scheme.
- 7.5.4 Although nearer the city centre and Malpas Road District Centre than the application site, the former Sainsbury's site does not integrate well with either being separated from both by the A4042 (Heidenheim Drive). Again foot links to the city centre and District Centre from this site are constrained and uninviting consisting of narrow footways and little used underpasses. Officers conclude that this site does not perform any better sequentially than the application site. In the light of this the sequential element of the retail tests is passed and that element of Policy SP19 (Assessment of Retail need) and R10 (new out of centre retail) is complied with. Nexus in their most recent assessment agree with this analysis. In conclusion no sequentially preferable in-centre or edge of centre site is judged to be available for the development.

## 7.6 Retail Impact

- 7.6.1 The final retail test is impact on existing centres. PPW10 advises that an impact assessment is needed when a proposal is expected to have an adverse impact on the viability and vibrancy of an existing centre. Elements to consider are:
- changes in turnover and trading ability within centres,
  - consumer choice,
  - traffic and travel patterns,
  - footfall,
  - impact on centre regeneration strategies or upon existing or proposed retail sites allocated in the development plan.
- 7.6.2 PPW10 advises that Retail Impact Assessment are mandatory on out of centre schemes above 2500m<sup>2</sup> but should be proportionate for smaller schemes where impacts on designated centres can be expected.
- 7.6.3 The applicant notes that this is a smaller scheme being for 1315m<sup>2</sup> of additional floorspace and therefore below the threshold identified in national policy. The applicant suggests that the uplift in retail floorspace is only 665m<sup>2</sup> this being the difference between the existing Barrack Hill store and the proposed store. However officers disagree with this stance. The existing store will not cease to exist and as an in-centre store its retention would be sought in any case in order to maintain the vitality and viability of a designated centre. Officers judge the uplift in floorspace to be the entirety of the proposed floorspace and any retail impact should be predicated on this larger area. The applicant has not done this instead they have assessed the uplift in floor area only and not all of that since they judge 20% of that uplift will be used for comparison retail reflecting the existing Aldi model of floorspace disposition i.e. they assess the impact of 492m<sup>2</sup> of additional convenience floorspace.
- 7.6.4 White Young Green have submitted an objection to the application on behalf of Sainsbury's Supermarkets and make the following points in regard to the retail impact assessment provided by the applicant and these are considered pertinent by officers:

*The withdrawal of the Aldi store from Malpas Road District Centre would clearly have a significant adverse impact on the designated centre in terms of its ability to draw trade from its surrounding catchment. In terms of impact on the current estimated district centre convenience turnover, it projected that the withdrawal of Aldi (£11.91m turnover) would reduce the convenience turnover by 98.3% - with the remaining convenience units (comprising the Esso kiosk, Lifestyle Express and Malpas Road General Store) accounting for just £204,7002 (1.7%) in 2018. Albeit accepting this basic assessment pays no regard to the re-occupation of the unit either for convenience or comparison use, the applicant has failed to consider this in any way themselves and therefore undoubtedly cannot reasonably conclude: "Impacts associated with the proposal in the design years (2018 and 2023) are low and represent no threat to the vitality and viability of the existing centres" (para 7.69).*

*The Planning & Retail Statement offers no consideration of the impact that the loss of this convenience operator would have on the vitality and viability of the centre and on the large walk-in residential catchment that it currently serves. No contemplation is given to the impact on linked trips which the store generates to support the other in-centre units, nor is there any consideration of the impact on local consumer choice at Malpas Road District Centre. It is deemed a reasonable assumption that existing customers will divert their custom to the new store and away from the designated centre. These fundamental points appear to have been entirely disregarded within the applicant's submission, notwithstanding that the withdrawal from the district centre is relied upon as the foundations of their quantitative argument.*

*Furthermore, no health checks have been undertaken to assess the vitality and viability of the Malpas Road District Centre or any other designated centres within the catchment area. Diversion of shoppers and expenditure from Newport district centres' shops and business to the Aldi proposal does represent a serious cause for concern given the fragility of the district centres and the retail sector generally.*

*The proposal entirely counteracts the thrust of the town centre first approach and should be refused on the grounds of retail impact.*

- 7.6.5 The Nexus evaluation of the applicant's submission agrees that the increase in comparison floor area within the proposed store is not significant and would not be material to the future vitality of any defined centre. However Nexus conclude that there would be an adverse impact on the Malpas Road District Centre from the loss of such a large area of convenience floorspace. As such national policy and local Policy R10 are not met since it cannot be shown since there would be no adverse effect on a defined retail centre (Malpas Road).
- 7.6.6 The applicant notes that in the recent Lidl's submission the Council took the view that the existing store to be vacated would not be occupied by a convenience retailer being too small to suit the current discount retail format but too large for a 'local' store format. It was concluded this store was likely to be occupied by a comparison retailer but that there would be no adverse impact on the sequentially preferable city centre. The applicant concludes that the same reasoning should be applied to this submission - the Barrack Hill store will not be re-occupied by a convenience retailer and as such the increase in convenience floorspace is only the difference between what is proposed and what already exists meaning there is sufficient quantitative need to justify the additional floorspace. It should be noted that in this case it is not accepted that quantitative or qualitative need for the proposed store exists.
- 7.6.7 However the vacated Lidl store is outside of a designated centre and it was demonstrated that the reuse of that floorspace for comparison retail would not damage an existing centre. That is not the case here. The Barrack Hill store is in-centre and the total loss of the floorspace for convenience retail would see a loss of £15.52 million of spend (2018 figures) from the district centre which thereafter would contain little in the way of convenience retail provision. The Lifestyle Express & the Shell Petrol Station would be the only retained convenience retailers in the District Centre. There has been no consideration of the likely impact on the district Centre overall should this scenario play out nor any consideration of the impact of additional comparison retail on the sequentially preferable city centre. There can certainly be no firm conclusion there would be no unacceptably adverse impact on the vitality and viability of the District Centre and on-balance the total loss of the overwhelmingly dominant convenience retailer from the District centre without replacement would be harmful to the District centre and would clearly undermine the centre first approach that underpins national and local retail policy. It should also be noted that the applicant's highway assessment was based on a 50% diversion from the Barrack Hill store which suggests that assessment was of the view some convenience retail would be retained at the old store which would still attract 50% of existing trips. Total loss of the existing store for convenience retail is likely to see even greater trip diversion and undermines the assumptions of the Transport Statement.

## 7.7 Flooding

- 7.7.1 The site lies within Flood Zone C1 (defended flood plain) of the River Usk. The site is immediately next to the flood walling recently installed in Crindau by CNC/NRW. Under national policy (Technical Advice Note 15 – Flooding) development must be justified in floodplain locations.
- 7.7.2 The relevant tests are outlined at Paragraph 6.2 of the TAN and require that a proposal:
- is necessary to assist, or be part of, a local authority regeneration initiative or a local authority strategy required to sustain an existing settlement; or,*  
*ii Its location in zone C is necessary to contribute to key employment objectives supported by the local authority, and other key partners, to sustain an existing settlement or region;*
- 7.7.3 In this case the Local Authority Strategy is the adopted Local Development Plan (there is no regeneration initiative for Crindau). The proposal has been found to be contrary to locally adopted retail policy and other policy elements as listed below. In broad terms the proposal does not accord with local policy and nor does it contribute to key employment objectives necessary to sustain an existing settlement or region. The proposal cannot be justified in the chosen location and therefore fails the first and most fundamental locational test as set out in TAN15. The site is currently developed for commercial purposes (lorry park) and contains

a building used for storage and other purposes ancillary to the use as a lorry park. Although this use and the proposed use are both less vulnerable in flooding terms it is difficult to see the proposal as a betterment in flood risk terms since it is likely to attract more people to the site and stock within the shop is likely to be at least as valuable as what may be stored in the current building. The existing building is likely to be more flood resilient than the proposed building due to its more basic construction. Vehicles could be moved away from the site in both cases. In any event no betterment in flood risk can be seen in terms of the proposal over the current use and arguably the proposed use would show greater vulnerability since it is likely to attract more people onto the site and risk to property would increase.

7.7.4 The applicant has provided a flood consequences assessment to support the application. This is a technical assessment of the consequences of flooding judged against criteria set out in national policy. The site is broadly level and the proposed store will have a finished floor level of 8.2m AOD. The existing flood wall will protect the site from floods up to 9.15m AOD. Given construction in 2019 the store would currently be floodfree for both the 1 in 200 year tidal flood and the 1 in 1000 year tidal flood due to the protection offered by the flood wall. Over the 75 year design life of the proposal the flood events will worsen and by 2094 both the 1 in 200 year and the 1 in 1000 year tidal flood would inundate the site since the floodwall would be overtopped. The site would not be flood free within its design life (75 years) and national and local policy would be failed.

7.7.5 The applicant subsequently provided a flood assessment addendum to address initial queries from Cyfoeth Naturiol Cymru / Natural Resources Wales in relation to the extreme 1 in 1000 year flood event. This confirms flooding on the site as follows:

- 2.32m in the car park near the river
- 1.6m at the store entrance
- 1.12m in the car park entrance near the site boundary

	Depth (m)	TAN limit (m) & exceedance	Flood flow (m <sup>3</sup> /s)	Exceedance of TAN limit	Flood velocity (m/s)	TAN limit (m/s) & exceedance
Car park by river	2.32	0.6 (+2.26)	0.95	Not specified	0.46	0.3 (+0.16)
Store entrance	1.6	0.6 (+1.0)	0.38	Not specified	0.29	0.15 (+0.14)
Car park entrance	1.12	0.6 (+1.06)	0.30	Not specified	0.28	0.3 (-0.02)

7.7.6 In essence the FCA addendum confirms that the site, both carpark and store would flood beyond the tolerable levels set out in TAN15 and that the exceedances found would amount to danger for all (including emergency services) across most of the site and danger for most at the entrance to the carpark. The exceedances are significant and would pose a risk to life. The addendum also confirms inundation would be rapid due to the close location to the river with the whole site flooding within 15 minutes.

7.7.7 The applicant notes the building will be of a resilient construction, tidal flooding is predictable and improvement to the flood defence can be relied upon to protect wider Crindau (hold the line). Surface water can be stored during tidelock conditions by using a geo-cellular membrane beneath the car park and there is no risk from flooding from rivers (as opposed to the tidal flood), groundwater or sewers. They also note the availability of CNC/NRWs flood warning system.

7.7.8 CNC/NRW object to the development of flooding grounds since it is not dry for its lifetime in the 1 in 200 year tidal flood and the consequences of the extreme event are unmanageable on the site. National and local flood policy are clearly compromised.

7.7.9 The aim of national and local policy is to direct development away from flood prone locations or only to allow them where the floodplain location can be justified and the inevitable flood event can be acceptably managed. Neither of these criteria is met by this submission. The applicant relies primarily upon the Tidal defences being maintained in the future and

references the 'hold the line' policy advocated within the Severn Estuary Shoreline Management Plan. This plan is non-statutory and identifies hold the line as being:

*Keeping the line of defence in approximately the same location as it is now. Existing defences are maintained, replaced or upgraded along their current alignment. This may or may not include upgrades to counter climate change and sea level rise.*

- 7.7.10 In short the plan is non-binding and in any event does not commit to any upgrade in the defences to account for climate change. There can be no certainty that the defences will be up-graded over the 75 year lifetime of the development and therefore no certainty the site can be kept dry for the entire lifetime of the development.
- 7.7.11 In flood terms the proposal is contrary to Policy SP3 (Flood Risk) and GP1 (Climate Change) of the adopted Local Development Plan (2011-2026) since national guidance on flooding (TAN 15) is not complied with. The development is not justified in this location and the consequences of a flood event cannot be acceptably dealt with.

## 7.8 Bio-diversity / Appropriate Assessment

- 7.8.1 The River Usk has been designated because the following species are special features to the River Usk:-
- Allis Shad;
  - Twaite Shad;
  - Bullhead;
  - River Lamprey;
  - Brook Lamprey;
  - Sea Lamprey;
  - Atlantic Salmon;
  - Otter;
  - Water Crowfoot.

- 7.8.2 The conservation objectives of the SAC are attached as an Appendix. The Usk is considered one of the best examples of a near natural river system in England and Wales. The range of plants and animals reflects a transition from nutrient poor to naturally rich. It was notified to protect a wide range of habitats and features. It also acts as an important wildlife corridor, an essential migration route and a key breeding area for nationally and internationally important species, including otter.

- 7.8.3 In previous consultation responses relating to the river CNC/NRW have identified the following as key areas of concern:

### **Otter Features:**

- 7.8.4 Particular threats to the otter features of the River Usk posed by the development were identified as being:
- The design and location of the development
  - Site clearance and Construction
  - Site Operation, and
  - The effectiveness of mitigation proposals

- 7.8.5 The proposed scheme is a commercial development of a supermarket. The supermarket will be located immediately adjacent to the recently completed flood wall with limited space to the rear of it. Some plant (cooling equipment) would be located close to the wall to the side of the building. In other parts of the site parking would abut the flood wall. An embankment lies on the far side of the wall before the ground falls away to the river channel.

- 7.8.6 It is considered that the design of the proposal would not have an unacceptable impact on the otter feature of the River Usk since the development faces away from the river with limited activity proposed on the immediate riverfront. Additionally the new flood wall and the existing embankment act to close off the site from the river and are a clear line of separation between the site and the river. The applicant has provided a drawing to show lighting levels associated



with the proposal and these show very slight increases in light levels over the current situation which have attracted no objection from CNC/NRW.

- 7.8.7 The site is currently in use as a lorry park and part of it is covered in a large building. It is very likely that the site has been raised and consolidated over the years given its location adjacent to the River Usk / Crindau Pill. It is not clear what former uses will have been operational on the site. Given the likelihood of the site being made ground to some extent and the uncertainty about former uses the site should be assumed to be contaminated. Currently the site is covered in hard material and infiltration of rain water is likely to be limited.
- 7.8.8 The risks posed to the river would arise from:
- the mobilisation of sediment which could wash into the river,
  - run-off of / or the percolation of contaminated waters (derived from the ground contamination on the site) into the river,
  - the facilitation of the movement of contaminated waters vertically through the soil profile,
- 7.8.9 Proposed conditions could require the submission of a Construction Environmental Management Plan (CEMP) which will require details of the working methods to be employed on the site. Specific clauses could control run-off which should ensure that waters which are polluted by either contamination or sediment do not enter the river. Another requirement of the CEMP could control working in the sensitive river front area to limit or prevent direct disturbance to the sensitive river bank environment particularly at night when otters are more likely to be active.
- 7.8.10 Further conditions could control the storage of fuels and hydrocarbons so that they are stored in such a manner that reduces the risk of contamination to ground and surface waters. Conditions could also control piling methodology reducing the risk of the mobilisation of contaminated waters through the soil profile.
- 7.8.11 The proposed scheme would see most of the site sealed preventing the infiltration of surface waters and breaking contact with potential contamination in the ground. The verification of the decontamination programme can be required under conditional controls. The chemical suitability of any imported fill materials can be controlled under a conditional regime attached to any permission granted. The efficacy of the decontamination programme can be secured under a suitable verification / contingency condition which can be applied to any permission granted.
- 7.8.12 Overall it is considered that conditional controls could acceptably control the risk posed by the proposal to the otter interest of the River Usk during the construction phase of the development.

Risks from site operation to the otter interest arise from:

- direct disturbance by people and dogs
  - disturbance by lighting
  - hydrocarbon contamination from motor vehicles
- 7.8.13 Conditions could place controls over external lighting which will ensure that the sensitive river bank environment remains unlit and that the chances of disturbance to otters is reduced. Conditions could require that surface water drainage from areas where hydro-carbons may be spilled from motor vehicles is cleansed of hydrocarbons through appropriate treatment of any run-off. This will reduce the risks of contaminated run-off reaching the river.

### **Fish Features**

- 7.8.15 Risk to fish features of the River Usk would arise primarily from:
- contaminated run-off from the site entering the river (sediment load and chemical content)
  - direct effects upon the river from construction and operation of the site; noise, vibration & lighting.
- 7.8.16 Particular Risks will accrue at the following stages:
- The design and location of the development

- Site clearance and Construction
- Site Operation, and
- The effectiveness of mitigation proposals

It is not considered that the design and location of the development will have an adverse effect upon fish features of the river.

- 7.8.17 Site clearance and operation has the potential to release contaminants or sediment but CEMP conditions in association with decontamination verification / contingency conditions would control these risks.
- 7.8.18 Specific conditions could protect the fish interest by preventing works that would interrupt the migration of shad. No works to provide drainage outfalls beyond those currently in place are proposed and therefore there would be no risk to the fish interest of the SAC by works within the riverbank.
- 7.8.19 Site operation could adversely affect water quality. Conditions could require run-off from areas where 'oil-drop' may be present to be cleansed of hydrocarbons. Other conditions could require general control over foul and surface water drainage.
- 7.8.20 Such conditions are considered adequate to prevent adverse impacts on the conservation interests of the river during the operational phase of the development in regard to fish.

### **Contamination**

- 7.8.21 The site is known to have been contaminated by previous uses (Ground Investigation Report; January 2019). The applicant has provided a preliminary strategy to deal with the significant contamination on the site which is to in effect break the contamination pathway by sealing the site. It is advised that even planted areas should have a 'break' with the ground below with raised planters used. All excavated soils would need to be disposed of offsite at suitably licensed facilities. Piling techniques would need to be conditioned to be appropriate in contaminated ground.

Ground water is also grossly contaminated and no remediation is suggested as possible since it would require the removal of large amounts of fill, would not address offsite issues and it is not clear what impact is being had upon the adjacent river. In essence the proposal is to do nothing but to ensure any de-watering is not to adjacent ground or waters. Contaminated water would need to be tankered offsite for disposal. This could be achieved through a CEMP condition. Overall the site is highly contaminated remediation is necessary conditions requiring compliance with the mitigation strategy and appropriate decontamination verification and contingency will be necessary to prevent unacceptable risk to ecological interests in the River Usk SAC.

### **Water quality / Hydrology and Drainage**

- 7.8.22 Risks to water quality would arise from:
- Run-off contaminated with sediment or chemicals leached from polluted ground entering the river,
  - Mobilisation of contaminated waters vertically through the soil profile,
  - Groundwater movement of contaminated waters through the soil to the river.
- 7.8.23 Particular Risks will accrue at the following stages:
- The design and location of the development
  - Site clearance and Construction
  - Site Operation, and
  - The effectiveness of mitigation proposals
- 7.8.24 The design and location of the proposal is not considered to pose any inherent risk to water quality over and above that posed by the existing unmitigated site. The provision of hard surfaces and the adequate treatment of run-off from these surfaces will reduce infiltration and potential risks to ground waters.

7.8.25 A CEMP condition would protect the river during the construction phase reducing risks to the conservation interests of the River Usk. During the operational phase conditions could deal with run-off requiring the removal of hydro-carbons as required and requiring a generalised control over foul and surface water run-off. Such conditions are considered adequate to prevent risk to the conservation interests of the river during the varying phases of the development.

### **Overall consideration**

7.8.26 The concerns regarding the potential for impact on the River Usk SAC are impacts on the otter feature including via the design and location of development, site clearance and construction, disturbance during the operation phase and mitigation; impacts on fish features; contamination risks; impacts on water quality, hydrology and drainage.

7.8.27 Risks arise from the possible discharge of contaminated surface and groundwater water drainage with the potential resultant impacts on the fish and otter features of the SAC. There is the potential for significant effect on the migratory fish and otter features of the River Usk SAC. The specific concerns relate to: how surface water would be disposed of during construction and operation; how potential contamination of groundwater on the site would be addressed; and what measures would be in place to prevent potentially contaminated run-off entering the River Usk during both construction as a result of disturbance of ground contamination and operational phases of the development. It would therefore necessary that should planning permission be granted conditions are imposed to provide suitable protection.

7.8.28 The current and previous uses of the site raise the question of contamination. It is therefore necessary that conditions be imposed to ensure that a mitigation strategy is fully implemented and that the finished mitigation programme is verified as acceptably complete and subject to revision as required. This is to include the installation of gas membranes in the buildings.

7.8.29 In terms of foul drainage, Conditions would require full details of provision so as to ensure there is sufficient capacity in the system thereby avoiding contamination of waters entering the River Usk SAC.

7.8.30 It is considered that with the imposition of suitable conditions to ensure that contamination of the River Usk SAC and SSSI is avoided and that remediation measures are implemented, there would be little likelihood of contaminated material entering the water system, and the proposal would not have a significant adverse effect on the River Usk SAC under these circumstances.

7.8.31 Other risks to the river front, particularly the otter feature are addressed via the proposed layout of the site and the proposed riverfront treatment.

7.8.32 In terms of in combination effects of the development other developments have taken place along the Usk river frontage in the vicinity of the site. The main developments of recent years have been the extensive flood defence works completed in Crindau recently by CNC/NRW and the redevelopment of the sites across the river to provide the Glan Usk School and the new housing development to the south of that site. The flood defence works and the housing developments were subject to their own appropriate assessments and were concluded not to be harmful to the interests of the SAC. Both developments were subject to conditional regimes that protected the SAC interests. The school site is an older permission going back to 2000 but that was also subject to an extensive conditional regime to remediate the site and it has been confirmed that this has been undertaken. The school is set back from the river and its day to day operation would have no impact on the river's bio-diversity interest. These sites in-combination with this proposal would not have an adverse impact on the bio-diversity interests of the River Usk.

7.8.33 Redevelopment sites to the south of the application site, south of the Town Bridge (Newport Bridge) have been subject to appropriate assessment and the issues that have arisen on these sites reflect those on this site. Those sites were also subject to a suite of planning conditions to control risks to the bio-diversity interests of the River Usk. These sites are

completed and given conditional compliance the in-combination effects of those sites with this site would be negligible.

7.8.34 With the inclusion of appropriate conditions it is considered that any adverse effects on the River Usk SAC associated with the development proposal could be satisfactorily avoided.

## 7.9 Parking / Access / Circulation

7.9.1 The proposal would provide 105 parking spaces, 5 are shown as disabled spaces and 6 would be for staff use. 2 motorcycle spaces are shown on plan. The site is in Parking Zone 5. The 'Parking' SPG requires the following:

- 3 commercial vehicles spaces;
- 1 space per 20m<sup>2</sup> of floor space (93 spaces required)
- 6% disabled spaces
- 2 bicycle stands per 500m<sup>2</sup> of floor area
- Motorcycle Parking: 5% of car provision

	SPG Requirement	Scheme provision	Surplus / Deficit
Commercial Vehicle Spaces	3	1	-2
Car Spaces	1 space per 20m <sup>2</sup> of floor space (93 spaces)	105	+12
Disabled Parking Spaces	6% of provision for customers and (6 spaces) & one per disabled staff member	5	-1
Bicycle Spaces	2 bicycle stands per 500m <sup>2</sup> of floor area (8 stands)	None shown but the applicant confirms they could be stored in the warehouse	-8
Motorcycle Spaces	5% of car provision (6 spaces)	2	-4

7.9.2 The deficiency in disabled spaces could be easily addressed by reducing the number of parent and child spaces so this is not a concern. Suitable bicycle parking can be conditioned. Motorcycle parking is deficient in number and is badly located down the side of the store is a less overlooked location which would tend to make it less likely to be used. However a condition could require revisions to address these deficiencies so this is not seen as a reason for objection. Parking provision subject to revision under condition would be adequate. PPW10 requires that minimally 10% of parking spaces should make provision for electrical vehicle charging in non-residential schemes. This could be required under condition. Policy GP4 (Parking) is complied with.

7.9.3 In terms of servicing only one truck space is shown with a ramped access to a loading bay. Although deficient by the SPG standard this is a normal delivery arrangement for the Aldi format and it is known to work well in terms of deliveries and removal of packaging and other re-cycleable items. Manoeuvring space within the yard is adequate for the truck to enter and leave in a forward gear. Delivery and servicing arrangements are seen as acceptable.

7.9.4 In terms of access the submitted drawing shows an in/out customer access direct from the Aldi roundabout and a second access on Albany Road for deliveries (in and out) and use as a customer exit. Capita were employed to assess the submission and concluded that access should be solely restricted to Albany Street due to *'geometric issues caused by a fourth arm at the roundabout'* and that that access should be subject to a capacity analysis to demonstrate it functions properly.

7.9.5 Capita also note that the application does not assess the site in terms of 'Active Travel'. Newport National Cycle Route 88 North (NP-SFT-C002) passes across the site's western boundary and would be interrupted by the proposed accesses to the site and it has not been demonstrated how the route would be incorporated into the site layout and how the site would link to active travel networks including how Albany Road would be crossed safely and how

pedestrians would move around the site. Currently the scheme is car dominated and inverts the 'Sustainable Transport Hierarchy' advocated in PPW10 placing use of the private motor car first and walking and cycling last. This reinforces the view that the site is not sustainable as would be anticipated in an out of centre location.

7.9.6 In conclusion the proposal is contrary to Policy GP4 of the adopted Newport Local Development Plan 2011-2026. The site does not have appropriate access for pedestrians, cyclists and public transport, it is not accessible by a choice of means of transport and does not provide suitable and safe access arrangements. The proposal does not conform with national guidance on active travel.

7.9.7 The Head of Streetscene has objected to the proposal on safety grounds due to the revisions to the existing roundabout that will facilitate access to the site and the provision of the new service access / customer exit. The concerns arise from a Stage 1 Road Safety Audit completed for the Council by Capita which identifies a series of concerns over the proposed roundabout and junction formation. The concerns are fundamental and would require significant revision of the scheme to be addressed. No changes have been sought since the proposal is unacceptable for other reasons and there would be no useful purpose in putting the applicant to additional expense.

7.9.10 As it stands the proposal does not provide suitable and safe access arrangements and would be detrimental to highway and pedestrian safety and is contrary to Policy GP4v & vii.

#### 7.11 Special Landscape Area, Design & Riverfront Access

7.11.1 The site is adjacent to the River Usk Special Landscape Area. Policy SP8 of the adopted NLDP requires proposals to contribute positively to the area through high quality design, materials and management schemes that demonstrate a clear appreciation of the area's special features.

7.11.2 Policy CF4 (Riverfront Access) requires foot and cycle access to the riverfront where practicable. Policy CE2 says waterfront development should integrate with the waterway and not turn its back on it and take account of the interests of regeneration, leisure, navigation, water quality and flow and nature conservation.

7.11.3 The Active Travel Act (Wales) 2013 requires local authorities in Wales to identify new active travel routes and incorporate them into an 'integrated network map' which each LA having regard to *securing new active travel routes and related facilities and improvements in existing active travel routes and related facilities*, see Section 4(4)(b). The Integrated Network Map must be submitted to the Welsh Ministers for approval. Section 7(1)(a) of the Act requires that LAs must in every year secure *new active travel routes and related facilities*. Section 6 of the Act requires that in developing Local Transport Plans (Transport Act 2000) each LA must have regard to their approved Integrated Network Map. The Council's Local Transport Plan was adopted in January 2015

7.11.4 The Council's Integrated Network Map identifies route INM/CAE/0002 as a route running via Shaftesbury Park across Crindau Pill and then around this site with a further link to Albany Street and the existing National Cycle Route. The proposed location of the store building tight to Crindau Pill would effectively prevent the provision of the Active Travel route landwards of the new flood wall that has been built and would prevent the spur from the riverfront back to Albany Road. There is potential for the route to be provided along the line of the old flood bank adjacent to the Pill but this would be problematical bringing people and dogs closer to the ecologically sensitive river front and encouraging further lighting which would not be desirable in bio-diversity terms. Additionally the building as proposed is entirely one sided with the potential path being squeezed into a constrained space and not overlooked. In effect this would replicate the position at the former Sainsbury's site where the riverfront path at the rear of the building was rarely used due to a lack of surveillance and anti-social behaviour. The current proposal severely curtails the future provision of an identified Active Travel Route contained within the local Transport Plan and contravenes Policy CF4.

- 7.11.5 In terms of Policy CE2 the development clearly turns its back on the waterfront and as noted above prejudices enhanced leisure provision / active travel along the river front. This Policy is not met.
- 7.11.6 In general design terms the building looks like an Aldi shop and would be an improvement in visual terms over the existing building which is very utilitarian. However the proposal is not well sited within the plot turning its back upon the river and is therefore not sensitive to the unique qualities of the site and does not respond positively to the character of the area. The proposal will impinge on the existing national cycle route and does not show good levels of connection with existing pedestrian routes and the layout is car dominated with no obvious prioritisation of pedestrian movement within this area.
- 7.11.7 Overall the proposal does not constitute good design and contravenes Policies GP6 and CE2 due to its failure to engage appropriately with its riverfront location. The proposal prejudices the delivery of Active Travel Routes identified by the Council under the Active Travel Act and its local Transport Plan and contravenes Policy CF4.

## 7.12 Regeneration Benefit / Employment

- 7.12.1 The site is currently in economic use providing lorry parking and what appears to be an ancillary storage building. Policy EM3 protects existing employment sites being developed for alternative uses unless certain criteria are met. The headline policy wording makes reference to 'existing employment sites' but the explanatory text more specifically identifies uses in the 'B' use classes although this does not automatically exclude non 'B' uses from the protection the policy offers. Planning Policy advise that the thrust of that Policy is to protect land in the 'B' use classes from development unless certain criteria are met showing the land is no longer required for employment purposes. The drive of the Policy is to prevent employment land being lost to higher value uses such as residential to the long term detriment of the city's economic potential.
- 7.12.2 In this case the site is not in an identifiable 'B' use being used as parking for HGVs. Storage in the building appears to be ancillary to that use. It is not clear what the lawful use of that building is but it appears to have been in use in association with the haulage use for some time. However there is no absolute certainty on the lawful use of the building but it appears reasonable to conclude it is not in any 'B' use category at the current time and has not been in such a use for an extended period.
- 7.12.3 At pre-application the Council advised that Policy EM3 was relevant to the determination of the proposed submission given that the site is traditional employment land.
- 7.12.4 Planning Policy Wales Edition 10 advises at Paragraph 5.4.2 that:

*Economic land uses include the traditional employment land uses (offices, research and development, industry and warehousing), as well as uses such as retail, tourism, and public services. The construction, energy, minerals, waste and telecommunications sectors are also essential to the economy and are sensitive to planning policy.*

- 7.12.5 National Policy supports the idea that retail uses are economic uses and that they could clearly support employment and the wider economy, however Technical Advice Note 23 reinforces the idea that traditional employment uses inclusive of B1, B2 and B8 land as well as other traditional employment land should be protected (Paragraph 4.6.8) and this includes from retail use and housing. TAN 23 is clear that existing employment sites (as distinct from sites in B uses classes only) should only be released to alternative uses such as retail or housing if one or more of the following apply:

- *they have poor prospects of being re-occupied for their previous use;*
- *the particular market that the site is part of is oversupplied;*
- *the existing employment use has unacceptable adverse impacts on amenity or the environment;*
- *the proposed redevelopment does not compromise unduly neighbouring employment sites that are to be retained*

- *other priorities, such as housing need, override more narrowly focussed economic considerations; and/or*
- *land of equal or better quality is made available elsewhere, even if this is not within the local planning authority boundary.*

7.12.6 The land in question is clearly an existing employment site and the applicant has not shown that any of the above criteria are met and that the land can be safely lost from its current use.

7.12.7 Additionally although Policy EM3 relates to business, industrial and warehousing land and retail is not explicitly excluded from these categories it is clear that like TAN23 the thrust of the Policy is to protect what PPW10 calls traditional employment land. The applicant has not done this and concludes that the Policy does not apply since the land is likely to be in a sui generis use rather than a 'B' use. Officers do not disagree with the point that the land is likely in sui generis use. However Officers do disagree that this means Policy EM3 does not apply here. Sui Generis land is perfectly capable of being used as a traditional employment site and that would certainly be the case in this instance. Officers maintain the view that Policy EM3 is relevant and that the applicant has not shown any criteria of this policy to be met.

7.12.8 Overall Officers conclude that Policy EM3 and the guidance of TAN23 is not met with in this case. The applicant has not robustly shown that this traditional employment land is surplus to requirement and can be discarded without harm to the economic prospects of the city.

7.12.9 That said the scheme offers clear economic benefits to the city and wider economy in terms of the uplift in turnover of the new store over the old one (£5.68 million on the applicant's own figures) and the increased employment offered in the new store over the old one (15 jobs). It should also be recognised that the old store is likely to be re-occupied and so the real gain in jobs may be more than 15 but this is difficult to quantify. The applicant has not quantified the additional wages likely to be paid and the probable impact of that in the local economy but clearly that will be beneficial. However there is no robust evidence that the economic gains that can be demonstrated or surmised will outweigh the loss of the existing traditional employment site. In terms of TAN 23 although no alternative site can be identified (retail sequential test) the proposal is not justified through quantitative and qualitative need and would harm the vitality and viability of existing centres (Malpas Road) and therefore should not be allowed to proceed on the chosen site regardless of the lack of alternative sites for the proposal. The job creation to be provided is not considered sufficient to outweigh the identified harms and the proposal has no special merit in terms of Policy objectives. In fact the proposal would undermine the 'centre first' policies of the adopted local plan and PPW10 and would move development from a more sustainable location to a less sustainable one. The guidance on loss of traditional employment sites contained in TAN23 has not been met under this submission.

7.12.10 In conclusion national and local policy is not met in relation to the protection of 'traditional employment land and this failure has not been shown to be robustly outweighed by any of the economic benefits of the scheme.

## 7.13 Residential Amenity & the Construction Process

7.13.1 One objection has been received relating to the scope for disruption from noise, dust, vibration and late working during the demolition / construction process. Some level of disruption would occur during works but these can be limited through application of a condition requiring a Construction Environment Management Plan (CEMP). These concerns are not seen as a reason to withhold permission.

## 8. **OTHER CONSIDERATIONS**

### 8.1 ***Crime and Disorder Act 1998***

Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. This duty has been considered in the evaluation of this application. It is considered

that there would be no significant or unacceptable increase in crime and disorder as a result of the proposed decision.

8.2 ***Equality Act 2010***

The Equality Act 2010 identifies a number of 'protected characteristics', namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership.

8.3 Having due regard to advancing equality involves:

- removing or minimising disadvantages suffered by people due to their protected characteristics;
- taking steps to meet the needs of people from protected groups where these differ from the need of other people; and
- encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

8.4 The above duty has been given due consideration in the determination of this application. It is considered that there would be no significant or unacceptable impact upon persons who share a protected characteristic, over and above any other person, as a result of the proposed decision.

8.6 ***Planning (Wales) Act 2015 (Welsh language)***

Section 31 of the Act clarifies that impacts on the Welsh language may be a consideration when taking decisions on applications for planning permission so far as it is material to the application. This duty has been given due consideration in the determination of this application. It is considered that there would be no material effect upon the use of the Welsh language in Newport as a result of the proposed decision.

8.7 ***Newport's Well-Being Plan 2018-23***

The Wellbeing of Future Generations (Wales) Act 2015 imposes a duty on public bodies to carry out sustainable development in accordance with the sustainable development principle to act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. This duty has been considered during the preparation of Newport's Well-Being Plan 2018-23, which was signed off on 1 May 2018. The duty imposed by the Act together with the goals and objectives of Newport's Well-Being Plan 2018-23 have been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable impact upon the achievement of wellbeing objectives as a result of the proposed decision.

8.8 ***Wales National Marine Plan (November 2019)***

The tidal River Usk is under the jurisdiction of the above plan which covers the coastal environment up to mean high water spring tides as well as the wider marine environment. The National Marine Plan is a relevant planning consideration and sits alongside other development plans and national policy including the NLDP. The following policies are considered relevant to this proposal:

- GEN\_01: Sustainable Development (analogous to Policy SP1); not complied with;
- GEN\_02: Proportionate Risk Based Approach;
- SOC\_01: Access to the Marine Environment (analogous to Policy CE2 & CF4 of the NLDP); not complied with.
- SOC\_07: Seascapes (analogous to Policies CE2 & SP8 of the NLDP); not complied with.
- SOC\_08: Resilience to coastal change and flooding (analogous to Policies SP3 & GP1 of the NLDP); not complied with.
- SOC\_11: Resilience to climate change (analogous to Policy GP1 of the NLDP); not complied with.
- ENV\_01: Resilient marine ecosystems (analogous to Policy GP5 of the NLDP); complied with.
- ENV\_02 – Impact on Marine Protected Areas (analogous to policy GP5)
- ENV\_06: Air and water quality (analogous to Policy GP7 of the NLDP); complied with.
- ENV\_07: Fish Species and Habitats (analogous to Policy GP5 of the NLDP); complied with.
- GOV\_01: Cumulative effects (Appropriate Assessment & EIA Screening)



- GOV\_02: Cross-border and plan compatibility (this section of the Officer report)
- T&R\_01: Tourism and recreation (supporting) (analogous to Policies CF4, CF8, T5 & T6 of the NLDP); not complied with.

It is considered that the relevant Policies of the Marine Plan have been appropriately assessed under consideration of the analogous NLDP policies and further analysis would be repetitious. On balance it is concluded the Marine Plan is not complied with due to the scheme being in a less sustainable location, its inhibition of the provision of waterfront access and its lack of resilience to flooding.

## **9. PLANNING BALANCE & CONCLUSION**

- 9.1 The principle benefit of the proposal is the provision of a larger Aldi store which would allow a larger range and choice of goods to be stocked and an improved customer experience stemming from that. However these are considered to be gains of limited weight particularly given that no significant harms can be identified in terms of the overtrading of the existing store at Barrack Hill.
- 9.2 Since the proposed store is outside a designated retail centre it is necessary to demonstrate need for the development. Nexus who have advised the Council in relation to retail matters advise that no quantitative need has been shown for the store. A consideration of the qualitative need for the store against the criteria set out in Planning Policy Wales does not lead to the conclusion that there are sufficient deficiencies in retail provision within the catchment or benefits of the scheme to justify a grant of planning permission. PPW10 is clear that this is a point of judgement and very much secondary to the establishment of a quantitative need. Caselaw in Wales is clear that additional retail tests relating to the sequential test and retail impact are not required in the event that need cannot be shown. Officers conclude that there is no sequentially preferable location (within a designated retail centre) for the proposal within the identified catchment but also conclude that should permission be granted there would be an unacceptably adverse impact on the vitality and viability of the Malpas Road District Centre. National and local retail policy is not complied with.
- 9.3 The site lies within a defended floodplain. The location within the floodplain has not been justified and nor has it been shown that the consequences of a flood event can be managed at the site. Cyfoeth Naturiol Cymru / Natural Resources Wales have objected to the proposal. The proposal is contrary to national and local flooding policy.
- 9.4 The site is not highly accessible by foot or public transport and does not support the aims of Active Travel and effectively inverts the sustainable transport hierarchy identified in PPW10. Suggested modal shifts away from private cars are modest at 5% and relate to staff only rather than the customer base. By effectively relocating the store from in centre to out of centre the proposal moves development from a more sustainable location to a less sustainable location. The aims of Active Travel are not supported. The proposal prejudices the delivery of Active Travel routes along the frontage of the River Usk with the building relating poorly to the River Usk and to existing Active Travel routes in the area.
- 9.5 The proposed access arrangements to the site are judged unsafe.
- 9.6 The proposal would see the loss of a traditional employment site whilst failing to demonstrate this would have no adverse impact on the future economic prospects of the city contrary to national advice and local policy.
- 9.10 Potentially adverse impacts on the River Usk Special Area of Conservation (SAC) can be avoided by the application of suitable conditions.
- 9.11 The benefits of the scheme are clearly outweighed by the identified harms and on balance the proposal should be refused.

## **10. RECOMMENDATION**

**REFUSED**

**Tudalen 49**

### Retail Need

01 The applicant has not robustly demonstrated quantitative need for the proposed store and nor has sufficient qualitative need been shown to justify approval. This is contrary to national policy and to Policy R10 of the adopted Newport Local Development Plan 2011 – 2026.

### Retail Impact

02 The relocation of the proposed store would result in the loss of an anchor store from the Malpas Road District Centre without replacement to the detriment of the vitality and viability of that centre and harming overall sustainability through the substantial loss of convenience retail from that centre contrary to Policy R10 of the adopted Newport Local Development Plan 2011-2026.

### Flooding

03 The location of the proposal on a defended flood plain has not been justified and the consequences of a flood event are not manageable over the lifetime of the development causing substantial risk to life and property. This is contrary to national flood policy and Policies SP3, GP1 and CE9 of the adopted Newport Local Development Plan 2011-2026.

### Active Travel / Sustainability

04 The proposal is unsustainably located and does not support the 'Sustainable Transport Hierarchy for Planning' espoused in Planning Policy Wales Edition 10 since the site is not highly accessible by walking or public transport and is highly reliant on the use of the private motor car. The site does not integrate well with and prejudices the use of existing Active Travel Routes and prejudices the delivery of identified new Active Travel Routes and is contrary to Policies SP1, GP4, CF4, T5, T6 and R10 of the adopted Newport Local Development Plan 2011-2026.

### Access

05 The proposed access arrangements are unsafe and prejudice vehicular and pedestrian safety and the safe use of National Cycle Route 88 (Newport to Caerleon Section) contrary to Policy GP4 of the adopted Newport Local Development Plan 2011-2026.

### Riverfront & SLA

06 The proposed scheme relates poorly to the river front turning its back on the water prejudicing the delivery of future leisure routes contrary to Policies CE2 and CF4 of the adopted Newport Local Development Plan 2011-2026.

### Loss of Traditional Employment Land

07 The applicant has not shown that this traditional employment site should be released for alternative use contrary to the advice of Technical Advice Note 23 and the requirements of Policy EM3 of the adopted Newport Local Development Plan 2011-2026.

### *NOTE TO APPLICANT*

01 This decision relates to the following plans & documents:

- Design & Access Statement
- Drawing SK11 – Visibility Review
- Drawing SK12 – Proposed Site Layout
- Drawing 170899 CGI 01 – Proposed Aldi Foodstore
- Drawing 170899-1400-P6 – Proposed Site Plan
- Drawing 170899-1502-P1 – Proposed Elevations
- Drawing B3332/E4.1 A – Lighting Layout
- Drawing 1321-01 – Soft Landscape Proposals
- Drawing 170899-1150-P1 – Existing Site Plan
- Drawing 170899-1401-P1 – Floor Plan
- Drawing 170899-1402-P1 – Roof Plan
- Drawing 170899-1403-P2 – Proposed Site Context Plan
- Drawing 170899-1501-P1 – Sections
- Drawing 170899-1100-P1 – Site Location Plan
- Entran Technical Note 2

- Email from Phillip Marsden 11 December 2019 15:41
- Planning Potential Letter dated 02 December 2019
- Craddys Technical Note 1 (October 2019)
- Entran Technical Note 1 – Transport (June 2019) & Appendices
- Email from David Williams 13/08/2019 09:53
- Stage 1 - Road Safety Audit (01 June 2019)
- Transport Assessment, Issue A (February 2018)
- Flood Consequences Assessment (February 2019)
- Ecological Assessment (28 January 2019)
- Landscape Maintenance & Management Plan (Rev 0) November 2018
- Planning Potential letter (04/02/2019)
- Ground Investigation Report B0710/19 (January 2019)
- Pre-Application Consultation Report (January 2019)
- Planning & Retail Statement (January 2019)

02 The development plan for Newport is the Newport Local Development Plan 2011 – 2026 (Adopted January 2015). Policies SP1, SP3, SP8, SP19, GP1, GP2, GP4, GP5, GP6, CE2, CE9, EM3, T4, T5, T7, R10 & CF4 were relevant to the determination of this application.

03 As of 1st October 2012 any connection to the public sewerage network (foul or surface water sewerage) for the first time will require an adoption agreement with Dwr Cymru Welsh Water. For further advice contact Dwr Cymru Welsh Water on 01443 331155.

04 The proposed development (including any demolition) has been screened under the Environmental Impact Assessment Regulations and it is considered that an Environmental Statement is not required.

**APPLICATION DETAILS**

**No:** 19/1149      **Ward:** ST JULIANS

**Type:** FULL

**Expiry Date:** 07-FEB-2020

**Applicant:** MICHAL ZVALA

**Site:** 30, ANNESLEY ROAD, NEWPORT, NP19 7EX

**Proposal:** CHANGE OF USE OF RESIDENTIAL PROPERTY (C3) TO 6NO. BEDROOM HOUSE IN MULTIPLE OCCUPATION (C4) AND EXTERNAL ALTERATIONS TO PROVIDE 3NO. PARKING SPACES

**Recommendation:** GRANTED WITH CONDITIONS

**1. INTRODUCTION**

- 1.1 This application seeks planning permission for the change of use of a 3no. bedroom residential property (C3) to a 6no. bedroom House in Multiple Occupation (HMO) at 30 Annesley Road in the St Julians ward.
- 1.2 A HMO is a house occupied by people who are usually unrelated and have private bedrooms but shared facilities such as kitchens, living areas and bathrooms. The proposed 6no. bedroom HMO falls into the C4 Use Class which allows between 3 and 6no. unrelated occupants to reside and share amenities.
- 1.3 The application is reported to Planning Committee at the request of Councillor Holly Townsend who shares the concerns of the local residents in relation to the impact on the existing parking situation, character of the existing established community of family homes and waste generated by the proposal.

**2. RELEVANT SITE HISTORY**

- 2.1 None.

**3. POLICY CONTEXT**

- 3.1 **The Newport Local Development Plan (NLDP) 2011-2026 (Adopted January 2015)**

*Policy SP1 Sustainability favours proposals which make a positive contribution to sustainable development.*

*Policy GP2 General Development Principles – General Amenity states that development will not be permitted where it has a significant adverse effect on local amenity in terms of noise, disturbance, overbearing, light, odours and air quality. Development will not be permitted which is detrimental to the visual amenity. Proposals should seek to design out crime and anti-social behaviour, promote inclusion and provide adequate amenity for future occupiers.*

*Policy GP4 'General Development principles – highways and accessibility' states that development proposals should make adequate provision for car parking and ensure that development would not be detrimental to highway or pedestrian safety.*

*Policy GP6 General Development Principles – Quality of Design states that good quality design will be sought in all forms of development. In considering proposals, a number of factors are listed which should be considered to ensure a good quality scheme is developed. These include consideration of the context of the site; access, permeability and layout; preservation and enhancement; scale and form of the development; materials and detailing; and sustainability.*

*Policy H8 Self Contained Accommodation and Houses in Multiple Occupation sets out the criteria for subdividing a property into self-contained flats. The scheme must be of*

*appropriate scale and intensity not to unacceptably impact on the amenity of neighbouring occupiers and create parking problems; proposals must not create an over concentration in any one area of the city; and adequate noise insulation is provided and adequate amenity for future occupiers.*

*Policy T4 Parking states that development will be expected to provide appropriate levels of parking.*

*Policy W3 Provision for Waste Management Facilities in Development states that where appropriate, facilities for waste management will be sought on all new development.*

### **Relevant Supplementary Planning Guidance**

Parking Standards SPG (Adopted August 2015)

Houses in Multiple Occupation (HMO) SPG (Updated January 2017)

#### **4. CONSULTATIONS**

4.1 None.

#### **5. INTERNAL COUNCIL ADVICE**

5.1 THE HEAD OF LAW AND REGULATION (ENVIRONMENTAL HEALTH HOUSING): No objection.

5.2 THE HEAD OF LAW AND REGULATION (ENVIRONMENTAL HEALTH): No objection subject to the following;

##### **Advisory - Sound insulation**

In relation to sound insulation of the proposed residential dwelling of the HMO, I have not commented. I assume that Building Control will ensure that the Building Regulations, Approved Document E is applied.

##### **Construction Working Hours - Specified**

Where applicable, no machinery shall be operated, no process shall be carried out and no deliveries accepted or despatched from the site outside the following times, 0800 and 1800 Monday to Friday, 0800 and 1300 Saturday and at no time on Sundays, Bank or Public Holidays during the construction work for the change of use.

**Reason:** In the interest of other residential amenities.

5.3 THE HEAD OF CITY SERVICES (HIGHWAYS):

In accordance with the Newport City Council Parking Standards the existing property generates a parking demand of 3 spaces. The proposed 6bed HMO generates a parking demand of 7 spaces at a ratio of 1 space per bedroom plus 1 visitor space. No off street parking provision is available at the property resulting in an existing shortfall of 3 spaces which must be taken into consideration.

The proposal increases the parking demand by 4 spaces and the applicant proposes to provide 3 of these spaces to the rear of the property by forming a new access onto Ronald Road. The applicant must demonstrate that 2.4 x 43m visibility splays are achievable in accordance with Manual for Streets. Any reduction in the visibility requirements will only be considered following submission of a seven day automated speed survey. In addition 2 x 2m pedestrian visibility splays are also required which appears unachievable to the east of the access due to the proximity of the neighbouring properties boundary. The applicant must demonstrate that the required visibility is achievable or I must object to the formation of the access due to the detrimental impact on highway safety.

Depending on the achievable visibility splays the application will result in between 1 and 4 parking spaces having to be provided on street. A parking survey has been submitted to demonstrate the existing parking stress and whether the additional demand can be accommodated. When taking into consideration the findings of the survey, and following a number of site visits, I'm satisfied that the additional demand can be accommodated on street.

I would offer no objection to the change of use however further information will be required in regard to the proposed parking area and access as detailed above.

## **6. REPRESENTATIONS**

### **6.1 NEIGHBOURS:**

All properties within 50m of the application site were consulted (89 properties) and a site notice displayed. 21no. objections have been received from 19no. residential properties along with a petition opposing the application that has 82no. signatures. A summary of the objections is listed below;

#### Parking & Highways

- Existing parking within the area is inadequate;
- The increased need for parking and traffic generation from HMO residents and visitors is of great concern to residents, especially as the property is on the junction of Ronald Road and Annesley Road;
- The dropped kerb required would offset the proposed off street parking proposed;
- The risk to pedestrians and other road users from vehicles;
- Visibility is restricted by cars parking on Ronald Road and dangerously on junctions/corners;
- Despite the fact that the site is located within a sustainable location and in close proximity to shops and services, this does not reduce car ownership levels;
- Many residents in the area work shifts and public transport does not meet the requirements of the shift workers;
- The proposal is in breach of Policy T4 of the NLDP;
- The route is also used frequently by local school children who are at present faced with difficulties crossing the junctions safely.

#### Residential Amenity & Character of the Neighbourhood

- Concerns are raised that the existing area, where residents take pride in where they live, and maintain the upkeep of the properties would be negatively affected, with generation of increase noise and disturbance. There are concerns that a HMO would not share the same high standards and have a detrimental affect on the character of this family area;
- A 6no. bedroom HMO within an existing 3no. bedroom terraced house would result in overcrowding and would have a detrimental effect on the health and wellbeing of the tenants;
- The number of other HMOs within the area and their impact on the character of the area;
- Six individuals will cause a large impact on no.29 (adjoining) due to the increased number of televisions and other electronic devices that would increase noise generation from within the property;
- Concerns in relation to the transient nature of the residents who would live in the HMO;
- The noise from the vehicles using the proposed parking area would impact the residential amenity of 2 Ronald Road and other neighbouring properties;
- Police have been called out to incidents at other HMOs within the area.

#### Waste

- Concerns that there would be increased rubbish generated. Residents have noticed increased rubbish in surrounding areas of Leicester Road, Ronald Road, Duckpool Road and Caerleon Road from other HMOs;
- On refuse collection day the additional bins and bags generated by a 6no. bedroom HMO put on the street will cause problems for pedestrians.

#### Other

- The property is being turned into a business in a residential area, as it will be rented out for profit;
- The HMO would be visually overbearing and is an inappropriate design for this part of the area. Such a large building would be totally out of keeping with the neighbouring properties, which are mainly smaller terraced style houses;
- Concerns raised that work has already commenced within the property to undertake the renovation and the issues faced by residents as skips have been left on the street.

6.2 COUNCILLORS HOURAHINE/TOWNSEND/TOWNSEND: Councillor Holly Townsend has raised the following objection to the application;

The residents are opposing this HMO development on the grounds of a severe lack of parking, despite the provision of three spaces; with six people moving in, there are likely to be more cars added to the already very overcrowded residential road- it is also used as a car park for those using shops on Caerleon Road. This road is an established community of family homes, and there is already some concern with the neighbours about an existing HMO on Leicester Road. The residents have also raised concerns about rubbish collection and recycling provision for potentially 6 single people, given the drive to reduce waste per household.

## 7. ASSESSMENT

7.1 The area is characterised by predominantly residential properties of a dense terrace nature in a linear form. The application property is located within a corner plot location on the junction of Annesley Road and Ronald Road and comprises of small front garden with low boundary wall and a good size rear garden. The property appears to have been extended at ground and first floor historically, however there is no planning history available in relation to this. The proposed layout of the HMO would comprise of 2no. bedrooms, shower/WC and open plan kitchen/living room at ground floor with 4no. bedrooms and bathroom at first floor. The scheme proposes to partially remove the boundary wall adjacent to Ronald Road at the rear of the property to provide 1no. parking space and 2no. motorcycle spaces. A HMO that falls within the C4 Use Class, as applied for within this application, would allow a maximum of 6no. unrelated occupants to reside within the property.

7.2 The main considerations of this application are the potential impacts of the change of use on parking provision and highway safety as well as the impact on the character and amenity of the surrounding area and neighbouring properties.

7.3 Policies GP2 (General Amenity), GP4 (Highways and Accessibility), GP6 (Quality of Design), T4 (Parking) and H8 (Self Contained Accommodation and Houses in Multiple Occupation) of the Newport Local Development Plan 2011 – 2026 (Adopted January 2015) are relevant to the determination of this application as are the Houses in Multiple Occupation (HMOs) Supplementary Planning Guidance (Updated January 2017) and the Parking Standards Supplementary Planning Guidance (Adopted August 2015).

7.4 The Newport City Council Supplementary Planning Guidance on Houses in Multiple Occupation (adopted August 2015, updated January 2017) and Policy H8 (Self Contained Accommodation and Houses in Multiple Occupation) seek to avoid clusters of HMOs as they can alter the composition of a community and detract from local visual amenity. The SPG also states that the Council will not support a planning application that would take the number of HMOs above 15% within defined areas, measured within a 50 metre radius of the application property. As of 22<sup>nd</sup> January 2020 the 50m radius captures 37no properties and of these there are no existing HMOs captured. Including the provision of the proposed HMO the concentration would equate to 2.7% Therefore, the proposed conversion does not conflict with the Council adopted SPG insofar as this threshold is concerned. It is noted that a recent HMO conversion approved close by at Morden Road is not within the 50m radius required to be considered within the SPG.

7.5 Notwithstanding the above, whilst the proposed change of use would not result in the number of HMO's in the 50m area exceeding 15% it is necessary to consider whether the

proposal is acceptable in respect of other material considerations. The impact of HMOs on social cohesion and community wellbeing is a material consideration. Evidence of problems associated with HMO's can include inadequate refuse storage arrangements or poorly maintained frontages, or quantified evidence of impacts on community cohesion. Properties in the vicinity have a well-kept appearance and there were no obvious signs of problems associated with a high concentration of HMO's. A number of objections have raised concerns in relation to waste and the storage of refuse, as there is considered to be adequate space to the rear of the property to accommodate refuse storage, a condition could be attached to any such permission requesting details of bin storage to be submitted to the LPA for approval prior to the first use of the building as a HMO. An objection received from the neighbouring property at 29 Annesley Road has raised concerns in relation to the intensification of the use of the property and the increase this would have on noise generation. The existing residential property contained 4no. bedrooms at first floor with other facilities at ground floor and the proposal would retain the first floor layout, including an additional 2no. bedrooms to the front of the property at ground floor. The proposed ground floor layout includes the living room and open plan kitchen, where you would anticipate residents to congregate and socialise within the rear extension of the property that is detached from the neighbouring property. Whilst it is acknowledged that there is an additional 2no. bedrooms at ground floor, these would replace the existing sitting room and living room which are considered to be comparable in terms of potential for noise generation. It is further noted that the stairway is located on the outer wall of the property so any potential for increase in footfall would be located away from the party wall. The Head of Law and Regulation (Environmental Health) has stated that Building Regulations would cover sound insulation, however this is not correct and the Building Control Department would have no involvement in this. Notwithstanding this, given the reasons explained above it is not considered that the proposal would result in an intensification of the use of the property that would require mitigation.

- 7.6 An internal research paper (unpublished) was prepared by Newport Council's planning team as a background report to the SPG to evaluate any evidence of harm caused by concentrations of HMO's within the city (see copy of report attached as Appendix A). The number of HMO's was compared to the actual number of households within a defined geographical area, namely lower layer super output areas (LSOA), which are used for the Census. Information was pulled together relating to complaints linked to licenced HMO's and crime rates within these areas.
- 7.7 The application site falls within Lower Super Output Area St Julians W01001675 which ranks 6<sup>th</sup> in terms of concentrations of HMOs in Newport as a whole. In terms of complaints it ranks 3<sup>rd</sup>, but only 33<sup>rd</sup> in terms of statistics on reported crime. As previously mentioned there is no licenced HMO within 50 metres of the existing property and the introduction of the proposed HMO would take it to 2.7%. This would fall well below the adopted SPG threshold and in this instance given that the change of use would not result in an exceedance of the 15% threshold identified in the council's adopted SPG it is considered that the Council cannot identify harm resulting from the presence this HMO in the area. It is not considered that the addition of a HMO in the area would be detrimental to the character of the area and the amenity of neighbouring residents contrary to policies H8 and G2 of the Council's LDP. In short, whilst concerns relating to social cohesion and amenity issues arising from a concentration of HMOs are noted, this is not a reason to refuse planning permission in this case.
- 7.8 A number of objections have also raised concerns that the number of bedrooms and their sizes would not provide an adequate level of residential amenity for the future occupiers. The Environmental Health Licensing section of the Council has been consulted on the application and considers the proposal to achieve the standards expected for a HMO and has offered no objection to the proposal. The property also benefits from an enclosed rear garden that would allow outdoor amenity space for residents and would provide recreation



space and area to dry clothes etc. Previous attempts to refuse permission for lack of amenity for future residents have failed at appeal.

7.9 In accordance with the Newport City Council Parking Standards, the existing property generates a parking demand of 3no. spaces. The proposed 6no. bedroom HMO would generate a parking demand of 7no. spaces at a ratio of 1no. space per bedroom and 1no. visitor space. The property currently benefits from no off street parking and as such there is an existing shortfall of 3no. spaces. The applicant has acknowledged that the area is within a sustainable location and has undertaken a sustainability appraisal that scores at least 10 points, resulting in a reduction of 2 spaces. This can be applied to the existing parking generation and previous appeal cases have confirmed that a 30% reduction in HMO parking expectation should also reasonably be applied, which results in the parking demand for the existing house of 1no. space and the proposed HMO 4no. spaces and 1no. visitor space. The proposal originally submitted included 3no. off street parking spaces within the rear garden of the property however it was apparent that only 2no. spaces could achieve the pedestrian and vehicular visibility splays and one of these spaces would be impeded by a telegraph pole. As such revised plans showing 1no. vehicular off street parking space that can achieve the necessary visibility splays was submitted, which also included 2no. motorcycle spaces. Whilst these do not count towards formal parking provision, the applicant is keen to offer future residents the opportunity of secure motorcycle storage as there is a demand for this. As such, when taking into account the off street parking provision and sustainability appraisal, the final demand for on street parking as a result of the proposal is 4no. spaces. The existing shortfall of the single residential property was 1no. space after applying the sustainability criteria and as such there is a net increase of 3no. spaces as a result of the development.

7.10 A parking survey has been submitted in accordance with best practice which was undertaken on a Wednesday and Friday evening at 00:30am and 00:45 and covered the streets within 200m/2 minutes walk of the application site, as set out below.



**Figure 1 – Parking Area Survey**

7.11 The on-street parking capacity of the survey area was calculated by measuring the length of kerbside parking available and dividing this by the length of a parking space (6m). Lengths of kerb with parking restrictions or across driveway entrances, access to garages were not included within the calculation. The results of the survey are shown in the table below.

Street	Available kerbside parking - Length (m)	Available kerbside parking - Parking Spaces Number	Wednesday 23 <sup>rd</sup> October 2019 at 00:30 No of cars (% occupied)	Friday 25 <sup>th</sup> October 2019 at 00:45 No of cars (% occupied)
Annesley Road (East side)	155	25	16(64%)	15(60%)
Annesley Road (West side)	143	23	17 (73%)	17 (73%)
Morden Road (east side)	120	20	16 (80%)	17 (85%)
Morden Road (West side )	69	11	9 (81%)	9 (81%)
Leicester Road (North side )	123	20	14(70%)	13(65%)
Leicester Road (South side)	118	19	14 (74%)	15 (79%)
Ronald Road (North side)	133	22	16(73%)	16 (73%)
Ronald Road (South side)	115	19	11 (57%)	13 (68%)
Caerleon Road (North side)	60	10	3 (30%)	4 (40%)
Caerleon Road (South side)	56	9	3(33%)	3 (33%)
Duckpool Road (east side)	182	30	25 (83%)	25 (83%)
Duckpool Road (west side )	170	28	24 (86%)	23 (82%)
<b>TOTAL</b>	<b>1444</b>	<b>236</b>	<b>168 (71%)</b>	<b>170 (72%)</b>

7.12 A large number of objections have been received from local residents and a Local Councillor with almost all of the correspondence raising highway safety and parking as issues of serious concern. A petition has also been submitted that has been signed by over 80 residents and whilst the reasons of concern are not referenced within the petition, a large number of photographs were submitted alongside that show the parking situation, presumably within the area however no locations, dates and times have been included. It is quite clear from the number of objections received and their contents in relation to parking concerns that parking demand is high within Annesley Road, Ronald Road and the surrounding areas and this is of concern of the Local Planning Authority. Out of the streets included within the parking survey Morden Road and Duckpool Road were of the highest parking stress ranging from 80-86%, however the application site is on the junction of Annesley Road and Ronald Road with its front door to Ronald Road and significant boundary/elevation to this highway where residents can reasonably be expected to park. The parking stress levels range from 66-69% on Annesley during the two surveys and 66-71% on Ronald Road. When including the additional 4no. spaces generated by the HMO the maximum parking stress ranges from 75-77% on Annesley Road and 76% to 80% on Ronald Road during the survey times. The parking survey did not take into account the introduction of the dropped kerb required on Ronald Road to access the proposed parking space, which would likely take away 1no. on street parking space, altering the parking stress to 80% to 82.5% on the survey dates. Whilst it is acknowledged that the surveys are a snapshot in time and there will be fluctuations in parking demand the above stress levels are considered to allow for this and capacity remains for visitors also. There are no parking restrictions along the side of the property. The case officer has undertaken various site visits during afternoon, evenings and on the weekend and whilst it is acknowledged that parking immediately outside the front elevations of residential properties is in high demand, there was more freely available parking elsewhere within Annesley Road, Ronald Road and surrounding streets that were surveyed. Morden Road appeared to be in the highest demand and the survey submitted is reflective of this. The Head of City Services (Highways) has also stated that during their site visits parking availability was observed.

7.13 Whilst the LPA understands the resident's frustrations in relation to parking availability, the fact on street space is not plentiful has proven to not be a robust reason to refuse planning permission. Inspectors assume that car ownership in HMO properties will be lower and most notably in sustainable locations such as this. When taking account of the recent appeal decisions, the generally positive attitude of the Welsh Inspectorate to HMOs in sustainable locations irrespective of whether they have off street parking, the parking survey undertaken by the applicant and the lack of objection from the Council's Highway officer, it is considered that there is sufficient on-street capacity in the area to accommodate the additional demand that the proposed HMO would result in without significant and demonstrable adverse effect on neighbouring amenity. Given the highly sustainable nature of the site officers recommend that there is no demonstrable harm resulting from the proposals in terms of either highway safety or neighbouring amenity.

## **8. OTHER CONSIDERATIONS**

### **8.1 *Crime and Disorder Act 1998***

Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. This duty has been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable increase in crime and disorder as a result of the proposed decision.

### **8.2 *Equality Act 2010***

The Equality Act 2010 identifies a number of 'protected characteristics', namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership.

8.3 Having due regard to advancing equality involves:

- removing or minimising disadvantages suffered by people due to their protected characteristics;
- taking steps to meet the needs of people from protected groups where these differ from the need of other people; and
- encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

8.4 The above duty has been given due consideration in the determination of this application. It is considered that there would be no significant or unacceptable impact upon persons who share a protected characteristic, over and above any other person, as a result of the proposed decision.

### **8.6 *Planning (Wales) Act 2015 (Welsh language)***

Section 31 of the Act clarifies that impacts on the Welsh language may be a consideration when taking decisions on applications for planning permission so far as it is material to the application. This duty has been given due consideration in the determination of this application. It is considered that there would be no material effect upon the use of the Welsh language in Newport as a result of the proposed decision.

### **8.7 *Newport's Well-Being Plan 2018-23***

The Wellbeing of Future Generations (Wales) Act 2015 imposes a duty on public bodies to carry out sustainable development in accordance with the sustainable development principle to act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. This duty has been considered during the preparation of Newport's Well-Being Plan 2018-23, which was signed off on 1 May 2018. The duty imposed by the Act together with the goals and objectives of Newport's Well-Being Plan 2018-23 have been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable impact upon the achievement of wellbeing objectives as a result of the proposed decision.

## **9. CONCLUSION**

- 9.1 The proposed change of use would not result in an exceedance of the threshold set out in the Council's Guidance and it is not considered that the proposals would result in a demonstrable impact to the character of the area.
- 9.2 Whilst the proposals would result in an increased demand for parking, the site is located within a sustainable location within close proximity to shops and services with good transport links. Furthermore, the applicant has provided information to demonstrate that the parking associated with the development can be accommodated on street and no objection is raised by the Council's highways officers to parking or other highway safety matters. As such, it is not considered that the proposals would result in an adverse impact to highway safety or neighbouring amenity.

## 10. RECOMMENDATION

### GRANTED WITH CONDITIONS

01 The development shall be implemented in accordance with the following plans and documents: Drawing No. 284/1/2 – Plans and Elevations as Proposed REV B (22/01/2020); Drawing No. 284/1/3 – Pedestrian and Visibility Plans REV B (22/01/2020); Proposed Floor Plans

#### ***Pre –occupation conditions***

02 Prior to first occupation of the development hereby approved, a scheme for the provision of waste storage and recycling shall be implemented in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be retained thereafter in perpetuity.

Reason: In the interests of amenities in accordance with Policy GP2 of the NLDP 2011-2026 (adopted January 2015).

03 Prior to the first use of the parking area hereby approved the visibility splays and sight line areas shown on the approved drawing "Drawing No. 284/1/3 – Pedestrian and Visibility Plans REV B (22/01/2020)" shall be provided. All these areas shall thereafter be kept free of all obstructions to visibility over a height of 0.6 metres.

Reason: In the interests of highway safety in accordance with Policy GP4 of the NLDP 2011-2026 (adopted January 2015).

#### ***General conditions***

04 The property shall have a maximum of six bedrooms and six persons.

Reason: To protect the amenity of adjoining occupiers and highway safety in accordance with Policy GP2 and GP4 of the NLDP 2011-2026 (adopted January 2015).

#### ***NOTE TO APPLICANT***

01 This decision relates to plan Nos: Site Location Plan; Existing Site Layout Plan; Existing Floor Plans; Block Plan; Drawing No. 284/1/2 – Plans and Elevations as Proposed REV B (22/01/2020); Drawing No. 284/1/3 – Pedestrian and Visibility Plans REV B (22/01/2020); Proposed Floor Plans.

02 The development plan for Newport is the Newport Local Development Plan 2011 – 2026 (Adopted January 2015). Policies GP2 were relevant to the determination of this application.

03 As of 1st October 2012 any connection to the public sewerage network (foul or surface water sewerage) for the first time will require an adoption agreement with Dwr Cymru Welsh Water. For further advice contact Dwr Cymru Welsh Water on 01443 331155.

04 Due to the minor nature of the proposed development (including any demolition) and the location of the proposed development, it is considered that the proposals did not need to be screened under the Environmental Impact Assessment Regulations.

**APPLICATION DETAILS**

**No:** 19/0703      **Ward:** LLISWERRY

**Type:** FULL (MAJOR)

**Expiry Date:** 3-MAR-2020

**Applicant:** AG QUIDNET UK INDUSTRIAL 2 BV

**Site:** STORAGE LAND THE NEWPORT BUSINESS CENTRE, CORPORATION ROAD, NEWPORT, NP19 4RF

**Proposal:** DEMOLITION OF EXISTING INDUSTRIAL UNITS AND CONSTRUCTION OF NEW INDUSTRIAL UNITS FOR B2 (GENERAL INDUSTRIAL) USE

**Recommendation:** Granted with Conditions

**1. INTRODUCTION**

- 1.1 This application seeks consent for the demolition of existing industrial units and the construction of two new industrial units for B2 use at the Newport Business Centre on Corporation Road. The new building would have a gross floorspace area of 1490m<sup>2</sup> and the proposals constitute 'Major' development. Accounting for the loss of the existing unit which has a floor area of 600m<sup>2</sup> this would equate to a net addition of 890m<sup>2</sup>.
- 1.2 The site is located within the urban boundary in an established industrial area which is allocated for employment use. The proposals are therefore acceptable in principle subject to all other material considerations.

**2. RELEVANT SITE HISTORY**

07/0964	PROPOSED CONSTRUCTION OF 7NO. SINGLE STOREY 'TRADE PARK' UNITS	Granted with Conditions
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**3. POLICY CONTEXT**

- 3.1 The following policies of the Newport Local Development Plan 2011 – 2026 (Adopted January 2015) are relevant to the application:
- Policy SP1 Sustainability favours proposals which make a positive contribution to sustainable development.*
- Policy SP3 Flood Risk ensures development is directed away from flood risk areas.*
- Policy SP17 Employment Land allocates 172 hectares of employment land for the plan period.*
- Policy GP2 General Development Principles – General Amenity states that development will not be permitted where it has a significant adverse effect on local amenity in terms of noise, disturbance, overbearing, light, odours and air quality. Development will not be permitted which is detrimental to the visual amenity. Proposals should seek to design out crime and anti-social behaviour, promote inclusion and provide adequate amenity for future occupiers.*
- Policy GP3 General Development Principles – Service Infrastructure states that development will only be provided where necessary and appropriate service infrastructure either exists or can be provided. This includes power supplies, water, means of sewage disposal and telecommunications.*
- Policy GP4 General Development Principles – Highways and Accessibility states that development should provide appropriate access for pedestrians, cyclists and public transport along with appropriate car parking and cycle storage. Development should not be detrimental to the highway, highway capability or pedestrian safety and should be designed to enhance sustainable forms of transport and accessibility.*

*Policy GP5 General Development Principles – Natural Environment states that proposals should be designed to protect and encourage biodiversity and ecological connectivity and ensure there are no negative impacts on protected habitats. Proposals should not result in an unacceptable impact of water quality or the loss or reduction in quality of agricultural land (Grades 1, 2 and 3A). There should be no unacceptable impact on landscape quality and proposals should enhance the site and wider context including green infrastructure and biodiversity.*

*Policy GP6 General Development Principles – Quality of Design states that good quality design will be sought in all forms of development. In considering proposals, a number of factors are listed which should be considered to ensure a good quality scheme is developed. These include consideration of the context of the site; access, permeability and layout; preservation and enhancement; scale and form of the development; materials and detailing; and sustainability.*

*Policy CE6 Archaeology states that proposals in areas known to have archaeological interest or potentially have archaeological interest will be required to undertake an archaeological impact assessment.*

*Policy T4 Parking states that development will be expected to provide appropriate levels of parking.*

#### **4. CONSULTATIONS**

- 4.1 NATURAL RESOURCES WALES (FLOODING): We object to the proposed development as submitted. The FCA has failed to demonstrate that the consequences of flooding can be acceptably managed. The proposed development is not designed to be flood free in the 0.5% plus climate change allowance event (CCA), therefore does not meet the criteria in A1.14 of TAN15. Conditions relating to controlled waters are requested if planning permission is granted.
- 4.2 GLAMORGAN GWENT ARCHAEOLOGICAL TRUST LTD: No objections to the positive determination of this application.
- 4.3 DWR CYMRU - WELSH WATER: No response.
- 4.4 WALES AND WEST UTILITIES: Provide details of apparatus in the area.

#### **5. INTERNAL COUNCIL ADVICE**

- 5.1 HEAD OF CITY SERVICES (HIGHWAYS): Does not oppose the application.
- 5.2 HEAD OF LAW AND REGULATION (NOISE) or (POLLUTION): We have no objections to the proposals; however conditions relating to plant and equipment noise and a construction environmental management plan are requested.
- 5.3 HEAD OF CITY SERVICES (HIGHWAYS DRAINAGE): No response.

#### **6. REPRESENTATIONS**

- 6.1 NEIGHBOURS: All properties within 50m were consulted (38no properties), a site notice was displayed and a press notice published in South Wales Argus. No response received.

#### **7. ASSESSMENT**

- 7.1 The existing building measures 64m in length, 10m in width and 4.5m in height. The proposed units would adjoin one another and would have a combined length of 85m, a height of 8.7m and would have a maximum depth of 18m.
- 7.2 The building would be sited near to the southern boundray of the site. It would be constructed from insulated metal panels to walls and roof with blue aluminium downpipes and guttering. Large roller shutter doors and entrance doors are proposed to the front elevation. 2m high metal mesh fencing is proposed to either side of the buildings.
- 7.3 The scale and design of the proposed building is considered to be in keeping with that of the other industrial buildings in the vicinity and does not give rise to any concerns.



- 7.4 The proposals do not include any changes to the existing access arrangements to the site from Corporation Road. The units would be served by 19 car parking spaces immediately to the front of the buildings. Officers have expressed concerns relating to capacity issues at the Corporation Road/SDR junction and subsequently the applicant has undertaken a Transport Statement in support of the proposals to assess the impact of the proposals on the local highways network. The statement has used observed data as opposed to TRICS data due to weaknesses associated with TRICS including the age of the data available and the limited geographical range of sites. A theoretical exercise has been undertaken whereby the traffic generated by the increase in the ground floor area of the redevelopment (7.6% of the total increase in floorspace for the whole of the Business Park) has been increased by the upper figure of 7.6% of that of the trip attraction of the existing site. Based on the forecast uplift in trip attraction resulting from the proposed redevelopment the forecast change in vehicle movements at the site access, and on Corporation Road and its adjoining junctions (including the NDR) would be negligible i.e. 7 two way movements in the network AM peak and 3 two way movements in the network PM peak period.
- 7.5 With regard to junction capacity analysis it is stated that as there is forecast to be a negligible increase in vehicle trip attraction to the redeveloped units, junction capacity assessments would not be required and have therefore not been undertaken at either the site access or the local highway network in the vicinity of the site including the NDR, on the basis that the redevelopment proposals would have a negligible effect with regard to change in vehicle movements on the adjoining highway network.
- 7.6 The statement concludes as the residual cumulative impacts of the proposed redevelopment of a number of units within the site are considered to be negligible there should be no reason from a transportation viewpoint why planning consent relating to the proposed redevelopment of the site should not be granted. As noted above, officers have expressed concerns about the capacity of the Corporation Road/SDR junction. The information submitted in support of this application concludes that the proposals would have a negligible effect on the highway network. The Head of Streetscene (Highways) has reviewed the information and confirms no objection is offered to the proposals. Future proposals that are considered to result in additional pressure on the junction will need to be carefully considered on a case by case basis.
- 7.7 The level of parking provision proposed accords with the Council's Parking SPG.
- 7.8 The application site lies entirely within Zone C1, as defined by the Development Advice Map (DAM) referred to under Technical Advice Note 15: Development and Flood Risk (TAN15) (July 2004). NRW Flood Map information, which is updated on a quarterly basis, confirms the site to be within the 0.5% (1 in 100 year) and 0.1% (1 in 1000 year) annual probability tidal flood outlines of the River Usk, which is a designated main river.
- 7.9 NRW have reviewed the FCA accompanying the application. The FCA explains that it is not possible to meet the criteria of TAN15 (A1.14 and A1.15) due to site constraints, i.e. the existing site level compared to the predicted flood depths. The FCA explains the site is on a natural low point in the area. The FCA points out that the proposal is a replacement for the existing industrial units on site and proposes betterment in terms of flood risk. The new units will be designed with increased flood resilience and mitigation measures, compared to the existing situation. These measures include an increase in finished floor levels (from 6.50m AOD to 6.80m AOD); raised electrical components and appropriate use of building materials resilient to flood waters. However, as the application proposes a net increase of 890m<sup>2</sup> in floor space, NRW would not consider this application as 'like for like'. When determining this application, but advise that the Authority may want to consider the betterment put forward by the applicant.
- 7.10 **Overview of Technical Advice Note 15: Development and Flood Risk**

TAN 15 sets out a precautionary framework and identifies that new development should be directed away from areas which are at a high risk of flooding (defined as Zone C), and where development has to be considered in such areas, only those developments which can be

justified on the basis of the tests outlined in the TAN are to be located in such areas. The Council is expected to consult Natural Resources Wales (NRW) when considering development in Zone C1. Where a planning authority is minded to go against the advice of NRW it should inform NRW prior to granting consent allowing sufficient time for representations to be made.

#### 7.11 **TAN 15 Tests**

Section 6.2 of TAN 15 refers specifically to justifying the location of development and that such development should only be permitted within zone C1 if determined by the planning authority to be justified in that location and demonstrated that:

- i) Its location in zone C is necessary to assist, or be part of, a local authority regeneration initiative or a local authority strategy required to sustain an existing settlement; or
  - ii) Its location in zone C is necessary to contribute to key employment objectives supported by the local authority, and other key partners to sustain an existing settlement or region;
- and,
- iii) It concurs with the aims of PPW and meets the definition of previously developed land (PPW fig 2.1); and
  - iv) The potential consequences of a flooding event for the particular type of development have been considered, and in terms of the criteria contained in sections 5 and 6 and appendix 1 found to be acceptable.

For the purposes of this report, criterion (i) to (iii) are referred to as Test 1 as this relates to the site justification and criterion (iv) which has a number of tests is referred to as Tests 2 to 12.

#### 7.12 **Test 1 – Justification**

##### **Its location in zone C is necessary to assist, or be part of, a local authority regeneration initiative or a local authority strategy required to sustain an existing settlement**

Located within the settlement boundary and on land already in use for B class uses. Policy presumption in favour of development and accords with policy SP18 (regeneration). Officers consider that the development is necessary as part of a local authority strategy required to sustain an existing settlement and is justified in this respect.

#### 7.13 **It concurs with the aims of PPW and meets the definition of previously developed land (PPW fig 2.1)**

PPW defines previously developed land as:

*Previously developed land is that which is or was occupied by a permanent structure (excluding agricultural or forestry buildings) and associated fixed surface infrastructure. The curtilage of the development is included, as are defence buildings, and land used for mineral extraction and waste disposal where provision for restoration has not been made through development management procedures.*

The proposal satisfies this test.

#### 7.14 **Tests 2 to 12 – Consequences of Flooding**

Moreover, criterion (iv) of paragraph 6.2 of TAN 15 refers specifically to the potential consequences of a flooding event for the particular type of development have been considered, and in terms of the criteria contained in sections 5 and 6 and appendix 1 found to be acceptable. These are referred to as tests 2 to 12 below.



***Test 2 - Flood defences must be shown by the developer to be structurally adequate particularly under extreme overtopping conditions (i.e. that flood with a 1 in 1000 chance of occurring in any year).***

NRW have not objected to the development on the basis of inadequate flood defences.

***Test 3 - The cost of future maintenance for all new/approved flood mitigation measures, including defences must be accepted by the developer and agreed with Natural Resources Wales.***

No flood mitigation measures proposed as part of the development.

***Test 4 - The developer must ensure that future occupiers of the development are aware of the flooding risks and consequences.***

It is intended to notify the developer of this by way of an informative to the planning consent.

***Test 5 - Effective flood warnings are provided at the site***

NRW confirm that flood warnings would be provided. No objection is offered by NRW on this basis.

***Test 6 - Escape/evacuation routes are shown by the developer to be operational under all conditions***

Escape/evacuation routes could flood to depths of 1.4m. The FCA suggests a rate of rise of 0.3m/hr based on tidal cycles but increasing with more extreme tides. TAN 15 specifies a maximum depth of 1m for industrial developments. It can therefore be concluded that at least in part, the evacuation route would not be operational under all conditions and this test is failed.

***Test 7 - Flood emergency plans and procedures produced by the developer must be in place***

NRW advise that if, as the planning authority, you are satisfied that the proposed location is the only possible location in planning terms, only then should you consider whether the above risks and consequences can be managed through measures such as emergency planning and evacuation.

A Flood Emergency Management Arrangement document has not been submitted.

The local planning authority does not have the in-house expertise to judge the effectiveness of the emergency plan. Planning Officers are therefore not in a position to comment upon the effectiveness of the flood emergency management arrangements document is acceptable and effective. These procedures would be the responsibility of the developer.

***Test 8 - The development is designed by the developer to allow the occupier of the facility for rapid movement of goods/possessions to areas away from floodwaters and Test 9 - Development is designed to minimise structural damage during a flooding event and is flood proofed to enable it to be returned to its prime use quickly in the aftermath of the flood.***

The depth of flooding to the new units during the predicted 0.5% CCA event would be 1.39m and during the extreme 0.1% CCA event would be 1.57m. This test is failed.

***Test 10 - No flooding elsewhere.***

NRW do not object to the development on this basis.

***Test 11 - Paragraph A1.14 of TAN 15 identifies that the development should be designed to be flood free for the lifetime (A1.5) of development for either a 1 in 100 chance (fluvial) flood event, or a 1 in 200 chance (tidal) flood event including an***

**allowance for climate change (depending on the type of flood risk present) in accordance with table A1.14.**

The predicted flood level for the 0.5% (1 in 200 year) plus climate change allowance (CCA) tidal flood event is 8.19m AOD. The new building is therefore predicted to experience a flood depth of 1.39m during this flood event. NRW object to the development on this basis.

**Test 12 – In respect of the residual risk to the development it should be designed so that over its lifetime (A1.15) in an extreme (1 in 1000 chance) event there would be less than 1000mm of water on access roads and within properties, the velocity of any water flowing across the development would be less than 0.3m/second on access roads and 0.45m/second in properties and the maximum rate of rise of floodwater would not exceed 0.3m/hour (refer to table at paragraph 7.7.41).**

The predicted flood level for the 0.1% (1 in 1000 year) plus CCA tidal flood event is 8.37m AOD. The new building is therefore predicted to experience a flood depth of 1.57m during this flood event. Using the maximum velocity on site for the 0.1% CCA at 1.53m/s, this is also above the guidance in A1.15. This is an improvement upon the flood risk experienced by the existing buildings that are at a lower level but nonetheless this test is failed.

- 7.15 In summary, when assessing whether the risks and consequences of flooding can be satisfactorily managed, the proposals do not satisfy several of the acceptability tests of TAN 15 and most notably, the building would not be flood free during a 1 in 200 year event. NRW object to the development. NRW acknowledge that it is not possible to meet the criteria of TAN15 (A1.14 and A1.15) due to site constraints, i.e. the site is on a natural low point in the area. It is also acknowledged that the new units will be designed with increased flood resilience and mitigation measures compared to the existing situation. NRW affirm that it is for the planning authority to be satisfied that the proposal is justified, and that the consequences of flooding are acceptable. The development meets the justification test and is therefore justified. If the justification test was failed, flooding would be grounds to refuse permission irrespective of the following points.
- 7.16 The source of potential flooding is from the tidal river Usk or Severn Estuary. The tidal predictions including for surge conditions are undertaken on a 24hr/7days a week basis by NRW. The current flood forecasting models underpinning NRW's Flood Warning Service should be able to provide up to 12 hours advance notice of a significant tidal event. Whilst advance flood notice should not be relied upon in isolation, it is considered that due to the tidal nature of the flood risk in this instance, some weight should be attributed to this in conjunction with all other considerations. The proposed use is 'low vulnerability' and TAN15 acknowledges the differences in terms of different types of development and associated vulnerability. Furthermore, the proposals have merit and include the regeneration of employment land and it has welcomed economic benefits.
- 7.17 On balance, when considering the associated flood risk together with the fact that the proposed use meets the justification test, is low vulnerability in its nature, along with the regeneration benefits of the proposals, the development is considered to be acceptable in terms of flood risk subject to a condition restricting the minimum floor level of the buildings.
- 7.18 As noted above the proposed use is B2. There are existing B2 uses at Newport Business Centre and there are intervening industrial buildings between the site and nearest residential properties which are located approximately 200m north. The Council's Environmental Health officers have advised that they have no objections to the proposals; however conditions relating to plant and equipment noise and a construction environmental management plan are requested.
- 7.19 The site is located within an archaeologically sensitive area. Glamorgan Gwent Archaeological Trust have been consulted and advise that as the proposed works are of a relatively limited scale beyond the footprint of the existing units they offer no objection.

## 8. OTHER CONSIDERATIONS

### 8.1 ***Crime and Disorder Act 1998***

Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. This duty has been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable increase in crime and disorder as a result of the proposed decision.

### 8.2 ***Equality Act 2010***

The Equality Act 2010 identifies a number of 'protected characteristics', namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership.

### 8.3 Having due regard to advancing equality involves:

- removing or minimising disadvantages suffered by people due to their protected characteristics;
- taking steps to meet the needs of people from protected groups where these differ from the need of other people; and
- encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

8.4 The above duty has been given due consideration in the determination of this application. It is considered that there would be no significant or unacceptable impact upon persons who share a protected characteristic, over and above any other person, as a result of the proposed decision.

### 8.6 ***Planning (Wales) Act 2015 (Welsh language)***

Section 31 of the Act clarifies that impacts on the Welsh language may be a consideration when taking decisions on applications for planning permission so far as it is material to the application. This duty has been given due consideration in the determination of this application. It is considered that there would be no material effect upon the use of the Welsh language in Newport as a result of the proposed decision.

### 8.7 ***Newport's Well-Being Plan 2018-23***

The Wellbeing of Future Generations (Wales) Act 2015 imposes a duty on public bodies to carry out sustainable development in accordance with the sustainable development principle to act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. This duty has been considered during the preparation of Newport's Well-Being Plan 2018-23, which was signed off on 1 May 2018. The duty imposed by the Act together with the goals and objectives of Newport's Well-Being Plan 2018-23 have been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable impact upon the achievement of wellbeing objectives as a result of the proposed decision.

## 9. CONCLUSION

9.1 The proposals provide economic benefits and do not give rise to any amenity or design concerns.

9.2 It is considered that the proposals would not result in a detrimental impact to the local highways networks and sufficient parking provision is to be provided on site.

9.3 The proposals do not comply with TAN15. However, in this instance when taking into consideration all of the relevant flooding factors, the low vulnerability of the proposals and the merits of the scheme including flood resilience measures, is considered that subject to a finished floor level condition the flood risk is acceptable.

9.4 It is recommended that the application is granted subject to the following conditions.

## 10. RECOMMENDATION

## GRANTED WITH CONDITIONS

01 The development shall be implemented in accordance with the following plans and documents: P-110 Revision B, P-111 Revision C, P-112 Revision C, P-210 Revision B, P-211.

Reason: In the interests of clarity and to ensure the development complies with the submitted plans and documents on which this decision was based

### ***Pre- commencement conditions***

02 Prior to the commencement of development, to include demolition, a Construction Environmental Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Construction Environmental Management Plan shall identify the steps and procedures that will be implemented to minimise the creation and impact of noise, air quality\*, vibration, dust\*\* and waste disposal resulting from the site preparation, groundwork and construction phases of the development and manage Heavy Goods Vehicle (HGV) access to the site. Measures to minimise the impact on air quality should include HGV routes avoiding Air Quality Management Areas and avoid vehicle idling. The approved Construction Environmental Management Plan shall be adhered to at all times, unless otherwise first agreed in writing with the Local Planning Authority.

\* The Institute of Air Quality Management <http://iaqm.co.uk/guidance/>

\*\*The applicant should have regard to BRE guide 'Control of Dust from Construction and Demolition, February 2003.

Reason: To ensure that the amenities of occupiers of other premises in the vicinity are protected in accordance with Policy GP2 of the NLDP.

03 Prior to the commencement of development, to include demolition, full details of foundation designs shall be submitted to the Local Planning Authority together with full details of ground waste methodology and pollution prevention control during construction of foundations and written approval received. The development shall be carried out fully in accordance with the approved details.

Reason: To prevent contamination of controlled waters in accordance with Policy GP5 of the NLDP.

04 Prior to the commencement of development, to include demolition, full details of proposed surface water drainage methods including pollutant infiltration prevention of controlled waters shall be submitted in writing to the Local Planning Authority and written approval received. The development shall be carried out fully in accordance with the approved details.

Reason: To ensure the site is adequately drained and to prevent contamination of controlled waters in accordance with Policy GP5 of the NLDP.

### ***Pre – construction conditions***

05 Prior to the first beneficial use of the buildings hereby approved, the vehicle parking spaces shall be demarcated as per the approved plans and shall remain available for parking in perpetuity.

Reason: To ensure the development is served by adequate parking provision in the interests of highway safety in accordance with Policy GP4 of the NLDP.

### ***General conditions***

06 Notwithstanding the provisions of the Town & Country Planning (General Permitted Development) Order 1995 and the Town & Country Planning Use Classes Order 1987, as amended (or any order revoking and re-enacting those Orders with or without modification) the premises the subject of this permission shall not be used other than for purposes falling within either Class B2 and/or B1 of the Use Classes Order without the prior grant of planning permission from the Local Planning Authority.

Reason: To ensure that the use remains compatible with surrounding land uses in the area.

07 Finished floor levels for development hereby approved shall be set no lower than 6.8 metres above Ordnance Datum (AOD) (Newlyn).

Reason: To reduce the risk of flooding to the proposed development and future users in accordance with Policy SP3 of the NLDP.

08 Noise emitted from plant and equipment located at the site shall be controlled such that the rating level, calculated in accordance with BS4142 2014, does not exceed a level of 5dB below the existing background level, with no tonal element to the plant.

Reason: To ensure that the amenities of occupiers of other premises in the vicinity are protected in accordance with Policy GP2 of the NLDP.

09 The external circulation areas shall be permanently retained for use by vehicles associated with the development hereby approved and shall be kept free of obstruction at all times.

Reason: To ensure the development is served by adequate circulation area in the interests of highway safety in accordance with Policy GP4 of the NLDP.

#### *NOTE TO APPLICANT*

01 The development plan for Newport is the Newport Local Development Plan 2011 – 2026 (Adopted January 2015). Policies SP1, SP3, SP17, GP2, GP3, GP4, GP6, CE6, T4 were relevant to the determination of this application.

02 As of 1st October 2012 any connection to the public sewerage network (foul or surface water sewerage) for the first time will require an adoption agreement with Dwr Cymru Welsh Water. For further advice contact Dwr Cymru Welsh Water on 01443 331155.

03 The proposed development (including any demolition) has been screened under the Environmental Impact Assessment Regulations and it is considered that an Environmental Statement is not required.

04 The applicant is advised it is their responsibility to ensure that they secure all other permits/consents relevant to their development. Please contact NRW to discuss these requirements further.

**APPLICATION DETAILS**

**No:** 19/1011      **Ward:** GAER

**Type:** FULL

**Expiry Date:** 04-DEC-2019

**Applicant:** GREGG TASKER, NEWPORT CITY COUNCIL

**Site:** TREDEGAR PARK, CARDIFF ROAD, NEWPORT

**Proposal:** SITING OF SHIPPING CONTAINER FOR STORAGE OF DISABILITY BIKES

**Recommendation:** GRANTED WITH CONDITIONS

**1. INTRODUCTION**

- 1.1 This application seeks full planning permission for the siting of a shipping container to be used for the storage of disability bikes.
- 1.2 The shipping container would be located in Tredegar Park. Tredegar Park is located within the urban boundary, it is designated as a registered Park and Garden as per policy CE4 of the Newport Local Development Plan, it is Environmental Space as per Policy CE3 and is also located within a C1 Flood Zone as per the Development Advice Maps (DAM) contained within Technical Advice Note (TAN) 15.

**2. RELEVANT SITE HISTORY**

- 2.1 None relevant

**3. POLICY CONTEXT****3.1 Newport Local Development Plan 2011-2026 (adopted January 2015)**

Policy **SP1 Sustainability** favours proposals which make a positive contribution to sustainable development.

Policy **SP2 Health** promotes development which has a positive contribution to health and well-being by being in a sustainable location, close to walking/cycling routes and green infrastructure.

Policy **SP9 Conservation of the Natural, Historic and Built Environment** protects habitats and species as well as Newport's listed buildings, conservation areas, historic parks and gardens, scheduled ancient monuments, archaeologically sensitive areas and landscape designated as being of outstanding historic interest.

Policy **SP12 Community Facilities** promotes development of new community facilities such as places of worship, cemeteries, health centres, nurseries, museums, public halls, cinemas, concert halls, allotments, leisure use etc. Development that affects existing community facilities should be designed to retain or enhance essential facilities.

Policy **GP2 General Development Principles – General Amenity** states that development will not be permitted where it has a significant adverse effect on local amenity in terms of noise, disturbance, overbearing, light, odours and air quality. Development will not be permitted which is detrimental to the visual amenity. Proposals should seek to design out crime and anti-social behaviour, promote inclusion and provide adequate amenity for future occupiers.

Policy **GP4 General Development Principles – Highways and Accessibility** states that development should provide appropriate access for pedestrians, cyclists and public transport along with appropriate car parking and cycle storage. Development should not be detrimental to the highway, highway capacity or pedestrian safety and should be designed to enhance sustainable forms of transport and accessibility.

Policy **GP6 General Development Principles – Quality of Design** states that good quality design will be sought in all forms of development. In considering proposals, a number of

factors are listed which should be considered to ensure a good quality scheme is developed. These include consideration of the context of the site; access, permeability and layout; preservation and enhancement; scale and form of the development; materials and detailing; and sustainability.

Policy **CE3 Environmental Spaces and Corridors** safeguards environmental space and corridors as identified on the Proposals Map. Development of environment space will only be permitted where the existing space will be improved or complemented; there is no adverse impact on nature conservation interest; there is an appropriate replacement; or it can be demonstrated that there is an excess of environmental space.

Policy **CE4 Historic Landscapes, Parks, Gardens and Battlefields** protects such sites against the impacts of inappropriate development. They are conserved and the policy promotes enhancement where possible.

Policy **CF11 Outdoor Leisure Developments** promotes outdoor leisure developments providing existing buildings are reused wherever possible and when a countryside location is essential, ancillary buildings are directly related to the primary leisure use.

#### **4. CONSULTATIONS**

- 4.1 **NATURAL RESOURCES WALES:** No objection. Given the nature of the proposed development (and in the absence of a flood consequences assessment) we consider the proposals could be acceptable, subject to the developer being made aware of the potential flood risks and advised to install flood-proofing measures as part of the development.
- 4.2 **DWR CYMRU – WELSH WATER:** No comments.
- 4.3 **WALES AND WEST UTILITIES:** Advise of apparatus in the area.
- 4.4 **WESTERN POWER DISTRIBUTION:** Advise of apparatus in the area.
- 4.5 **CADW PARKS AND GARDENS:** It is proposed to site the shipping container in the park to the south of a modern park building. There is no information with the application to state why this area has been selected for the container or whether part of the existing building could be used to store the bikes instead. Further information is required on these aspects, please, and how the registered park and garden has been considered during this application.

#### **5. INTERNAL COUNCIL ADVICE**

- 5.1 **HEAD OF CITY SERVICES (TREE OFFICER):** No objection.
- 5.2 **HEAD OF LAW AND REGULATION (ENV. HEALTH):** No objection.
- 5.3 **HEAD OF CITY SERVICES (HIGHWAYS):** No objection.
- 5.4 **HEAD OF CITY SERVICES (DRAINAGE):** No response.

#### **6. REPRESENTATIONS**

- 6.1 **NEIGHBOURS:** All properties sharing a common boundary with the application site were consulted (2 properties) and a site notice was displayed. No responses.

#### **7. ASSESSMENT**

- 7.1 The proposed shipping container would have a typical metal construction. It would measure 6.058m in length, 2.44m in width and 2.591m in height. It would be sited in between the existing toilet and changing rooms building; and the southern boundary of the park which runs along side the A48. The shipping container would provide storage for disabled bikes for children.
- 7.2 The purpose of the containers is to store disabled bikes for children to be used within Tredegar Park. Policy SP1 (vii) states that proposals should seek to improve facilities, services and overall social and environmental equality of existing and future communities. Policy SP2 states that development proposals should seek to maximise their positive contributions to health and well being... and policy GP4 (i) states that development proposals should provide appropriate access for pedestrians, cyclists and public transport in accordance with national guidance. The supporting text to this policy states "...The mobility and access requirements of those with increased needs should be fully considered". It is

considered that the proposed development would meet the aims of these policies and it would promote access to all, health and well-being.

### **7.3 Residential amenity**

7.3.1 The site is situated well within the park grounds and the nearest residential properties are located around 220m to the north east. The shipping container would have a low profile and would be located a significant distance from residential properties. As such it is considered that there would be no detriment to residential amenity. The Councils Environmental Health Officer has no objection to the proposal.

### **7.4 Visual amenity**

7.4.1 In terms of the visual impact of the proposed shipping container it is recognised that it has a utilitarian and functional design. It would be located in a position where there would be some passing views from the A48, there are a mix of mature and more juvenile trees along the southern boundary with the A48 which, would limit views during the summer months. It would also be viewed in the context of the rendered toilet and changing room block behind, the children's playground, crazy golf area, exercise paraphernalia and the disused outdoor splash pool. It is considered that it would not be harmful to visual amenity given the limited views and the surrounding context. A condition is recommended to secure the final painted finish of the container.

### **7.5 Historic Park and Garden**

7.5.1 Tredegar Park is a registered Park and Garden. CADW maintain the register in terms of historic parks and gardens. The register notes that the park originally formed part of the Tredegar House estate however, it notes that it is now "...severely truncated, built-on and transected by roads, most notably by the M4 motorway".

7.5.2 Planning Policy Wales (Edition 10) states that the Welsh Governments objectives are to preserve the special interests of sites on the register of historic parks and gardens.

7.5.3 Technical Advice Note 24 (Historic Environment) states that it is for the local planning authority to consider if the impact of development is likely to be unacceptably damaging.

7.5.4 Cadw has commented on the application. They query why this area has been selected for the container and whether the existing building be used to store the bikes instead. The applicant states that the existing building is used for changing rooms and public toilets; and neither of these facilities can be lost. The building has no room for the storage of the bikes as they have larger dimensions due to their adaptation for disabled use. They note that other parks which have a disabled bike scheme have needed to use containers for the same reasons.

7.5.5 It is considered that the shipping container would have a limited visual impact, given its limited size, low profile and position in relation to other park buildings and play/exercise equipment. The storage containers would promote an inclusive activity which, positively supports health and well-being. On balance, it is considered that the proposed container would not be damaging to the registered park and garden; and the special interests of the park and garden would be preserved.

### **7.6 Flood risk**

7.6.1 The site is located within flood zone C1. Natural Resources Wales has considered the scale and nature of the development; and has no objection to the proposal subject to the applicant being made aware of the potential flood risks and advised to install flood-proofing measures as part of the development. It is recommended that an informative is added to alert the applicant to this.

### **7.7 Highways**

7.7.1 The existing use of the grounds for recreational use is well established and is served by an existing area of parking to the east of the application site. It is considered that the proposed shipping container would not directly result in the increase in parking demand as they support an existing use and the Head of City Services (Highways) has offered no objection to the application.



## 7.8 **Trees**

7.8.1 There are a number of trees within proximity to the application site however, the Councils Tree Officer has advised that there is no objection to the siting of the container in this position.

## 8. **OTHER CONSIDERATIONS**

### 8.1 ***Crime and Disorder Act 1998***

Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. This duty has been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable increase in crime and disorder as a result of the proposed decision.

### 8.2 ***Equality Act 2010***

The Equality Act 2010 identifies a number of 'protected characteristics', namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership.

8.3 Having due regard to advancing equality involves:

- removing or minimising disadvantages suffered by people due to their protected characteristics;
- taking steps to meet the needs of people from protected groups where these differ from the need of other people; and
- encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

8.4 The above duty has been given due consideration in the determination of this application. It is considered that there would be no significant or unacceptable impact upon persons who share a protected characteristic, over and above any other person, as a result of the proposed decision.

### 8.6 ***Planning (Wales) Act 2015 (Welsh language)***

Section 31 of the Act clarifies that impacts on the Welsh language may be a consideration when taking decisions on applications for planning permission so far as it is material to the application. This duty has been given due consideration in the determination of this application. It is considered that there would be no material effect upon the use of the Welsh language in Newport as a result of the proposed decision.

### 8.7 ***Newport's Well-Being Plan 2018-23***

The Wellbeing of Future Generations (Wales) Act 2015 imposes a duty on public bodies to carry out sustainable development in accordance with the sustainable development principle to act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. This duty has been considered during the preparation of Newport's Well-Being Plan 2018-23, which was signed off on 1 May 2018. The duty imposed by the Act together with the goals and objectives of Newport's Well-Being Plan 2018-23 have been considered in the evaluation of this application. It is considered that there would be a positive impact upon the achievement of wellbeing objectives as a result of the proposed decision.

## 9. **CONCLUSION**

9.1 It is considered that the proposed shipping container to be used for the storage of disabled bikes would promote the aims of Planning Policy Wales 10, the Well-being of Future Generations (Wales) Act 2015 and policies SP1, SP2, SP12, GP4 and CF11 of the Newport Local Development Plan 2011-2026 (adopted January 2015). The proposed shipping container is considered to be visually acceptable (subject to a condition securing the final finish), it would not result in an acceptable impact of residential amenity and the registered Park and Garden would be preserved. It is considered to be in accordance with policies SP9, GP2, GP6, CE3 and CE4 of the Newport Local Development Plan. It is recommended that planning permission is granted with conditions.

## 10. RECOMMENDATION

### GRANTED WITH CONDITIONS

01 The development shall be implemented in accordance with the following plans and documents: TPDC/LP/01 and technical drawings series 2011.

Reason: In the interests of clarity and to ensure the development complies with the submitted plans and documents on which this decision was based

#### ***Pre- commencement conditions***

02 Prior to the siting of the shipping container hereby approved, the shipping container shall be finished in accordance with details (paint and colour) which shall have previously been submitted to and approved in writing by the Local Planning Authority. The shipping container shall be maintained accordingly in perpetuity.

Reason: In interests of visual amenity and to preserve the features of the registered Park and Garden, in accordance with policies SP9, GP6 and CE4.

#### ***NOTE TO APPLICANT***

01 The development plan for Newport is the Newport Local Development Plan 2011 – 2026 (Adopted January 2015). Policies SP1, SP2, SP9, SP12, GP2, GP4, GP6, CE3, CE4 and CF11 were relevant to the determination of this application.

02 Due to the minor nature of the proposed development (including any demolition) and the location of the proposed development, it is considered that the proposals did not need to be screened under the Environmental Impact Assessment Regulations.

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**APPLICATION DETAILS**

**No:** 19/1210      **Ward:** GAER

**Type:** FULL

**Expiry Date:** 02-FEB-2020

**Applicant:** F PUTZU, NEWPORT NORSE

**Site:** YSGOL BRYN DERW, MELFORT ROAD, NEWPORT, NP20 3FQ

**Proposal:** RELOCATING TALL FENCE WITH LOW FENCE

**Recommendation:** GRANTED WITH CONDITIONS

**1. INTRODUCTION**

- 1.1 This application seeks permission for the relocation of existing fences at Ysgol Bryn Derw in the Gaer Ward. An existing 2.4 metre high fence is to be replaced with a 1.5 metre high fence which exists elsewhere on the site and vice versa.
- 1.2 The application is reported to Planning Committee as the land is owned by the Council.

**2. RELEVANT SITE HISTORY**

- 2.1 None.

**3. POLICY CONTEXT****3.1 Newport Local Development Plan 2011-2026 (Adopted January 2015)**

Policy GP2 (General Amenity) states;

Development will be permitted where, as applicable:

- i) There will not be a significant adverse effect on local amenity, including in terms of noise, disturbance, privacy, overbearing, light, odours and air quality;
- ii) The proposed use and form of development will not be detrimental to the visual amenities of nearby occupiers or the character or appearance of the surrounding area;
- iii) The proposal seeks to design out the opportunity for crime and anti-social behaviour;
- iv) The proposal promotes inclusive design both for the built development and access within and around the development;
- v) Adequate amenity for future occupiers

Policy GP6 (Quality of Design) states;

Good quality design will be sought in all forms of development. The aim is to create a safe, accessible, attractive and convenient environment. In considering development proposals the following fundamental design principles should be addressed:

- i) Context of the site: All development should be sensitive to the unique qualities of the site and respond positively to the character of the area;
- ii) Access, permeability and layout: All development should maintain a high level of pedestrian access, connectivity and be laid out so as to minimise noise pollution;
- iii) Preservation and enhancement: where possible development should reflect the character of the locality but avoid the inappropriate replication of neighbouring architectural styles. The designer is encouraged to display creativity and innovation in design.
- iv) Scale and form of development: new development should appropriately reflect the scale of adjacent townscape. Care should be taken to avoid over-scaled development.
- v) Materials and detailing: high quality, durable and preferably renewable materials should be used to complement the site context. Detailing should be incorporated as an integral part of the design at an early stage.
- vi) Sustainability: New development should be inherently robust, energy and water efficient, flood resilient and adaptable, thereby facilitating the flexible re-use of the

building. Where existing buildings are present, imaginative and sensitive solutions should be sought to achieve the re-use of buildings.

#### **4. CONSULTATIONS**

4.1 None.

#### **5. INTERNAL COUNCIL ADVICE**

5.1 None.

#### **6. REPRESENTATIONS**

6.1 NEIGHBOURS: All properties with a common boundary have been consulted (sixteen addresses). No representations have been received.

6.2 SITE NOTICE (Displayed 17<sup>th</sup> December 2019): No representations received.

#### **7. ASSESSMENT**

7.1 There is an existing 1.5 metre high fence running along the northern boundary of the site. It is proposed to replace a length of approximately 55 metres with a 2.4 metre high fence which is located to the south of the existing fence closer to the school building. The existing 1.5 metre fence would replace the relocated 2.4 metre fence.

7.2 Both fences are constructed from vertical metal rails with a horizontal rail at the top and bottom. They are dark green in colour with views available through the fences.

7.3 The 2.4 metre high fence would run adjacent to a pedestrian walk way to the front of properties no.33 to no.48 Melfort Gardens. The fence would be approximately 9.5 metres from the front elevation of the nearest property. It is considered that due to the proximity of the fence and as views would be afforded through it, the proposals would not have an unacceptable impact on residential amenity.

7.4 The fences are of a typical appearance for the established educational use of the site and as such it is not considered that they would result in an unacceptable impact on the character or appearance of the area.

#### **8. OTHER CONSIDERATIONS**

##### **8.1 *Crime and Disorder Act 1998***

Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. This duty has been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable increase in crime and disorder as a result of the proposed decision.

##### **8.2 *Equality Act 2010***

The Equality Act 2010 identifies a number of 'protected characteristics', namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership.

8.3 Having due regard to advancing equality involves:

- removing or minimising disadvantages suffered by people due to their protected characteristics;
- taking steps to meet the needs of people from protected groups where these differ from the need of other people; and
- encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

8.4 The above duty has been given due consideration in the determination of this application. It is considered that there would be no significant or unacceptable impact upon persons who share a protected characteristic, over and above any other person, as a result of the proposed decision.

8.6 **Planning (Wales) Act 2015 (Welsh language)**

Section 31 of the Act clarifies that impacts on the Welsh language may be a consideration when taking decisions on applications for planning permission so far as it is material to the application. This duty has been given due consideration in the determination of this application. It is considered that there would be no material effect upon the use of the Welsh language in Newport as a result of the proposed decision.

8.7 **Newport's Well-Being Plan 2018-23**

The Wellbeing of Future Generations (Wales) Act 2015 imposes a duty on public bodies to carry out sustainable development in accordance with the sustainable development principle to act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. This duty has been considered during the preparation of Newport's Well-Being Plan 2018-23, which was signed off on 1 May 2018. The duty imposed by the Act together with the goals and objectives of Newport's Well-Being Plan 2018-23 have been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable impact upon the achievement of wellbeing objectives as a result of the proposed decision.

**9. CONCLUSION**

9.1 The proposals would not have an unacceptable impact on the character or appearance of the street scene or the amenity of neighbouring occupiers when assessed against the adopted policies and guidance.

**10. RECOMMENDATION**

GRANTED WITH CONDITIONS

01 The development shall be implemented in accordance with the following plans and documents; Proposed External Fence Details and Proposed External Fence Arrangements. Reason: In the interests of clarity and to ensure the development complies with the submitted plans and documents on which this decision was based.

*NOTE TO APPLICANT*

01 The development plan for Newport is the Newport Local Development Plan 2011 – 2026 (Adopted January 2015). Policies GP2 and GP6 were relevant to the determination of this application.

02 Due to the minor nature of the proposed development (including any demolition) and the location of the proposed development, it is considered that the proposals did not need to be screened under the Environmental Impact Assessment Regulations.



# Report

## Planning Committee

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### Part 1

Date: 5<sup>th</sup> February 2020

**Subject** **Appeal Decisions**

**Purpose** To inform Members of the outcome of recent appeals

**Author** **Head of Regeneration, Investment and Housing**

**Wards** Bettws, Caerleon, Tredegar Park

**Summary** The following planning appeal decisions are reported to help inform future decisions of Planning Committee

**Proposal** **To accept the appeal decisions as a basis for informing future decisions of the Planning Committee.**

**Action by** Planning Committee

**Timetable** Not applicable

This report was prepared without consultation because it is to inform Planning Committee of appeal decisions already taken.

## **Background**

The reports contained in this schedule provide information on recent appeal decisions.

The purpose of the attached reports is to inform future decision-making. This will help ensure that future decisions benefit the City and its communities by allowing good quality development in the right locations and resisting inappropriate or poor quality development in the wrong locations.

The applicant has a statutory right of appeal against the refusal of permission in most cases. There is no Third Party right of appeal against a decision.

Work is carried out by existing staff and there are no staffing issues. It is sometimes necessary to employ a Barrister to act on the Council's behalf in defending decisions at planning appeals. This cost is met by existing budgets. Where the Planning Committee refuses an application against Officer advice, Members will be required to assist in defending their decision at appeal.

Where applicable as planning considerations, specific issues relating to sustainability and environmental issues, equalities impact and crime prevention impact of each proposed development are addressed in the relevant report in the attached schedule.

## **Financial Summary**

The cost of defending decisions at appeal is met by existing budgets. Costs can be awarded against the Council at an appeal if the Council has acted unreasonably and/or cannot defend its decisions. Similarly, costs can be awarded in the Council's favour if an appellant has acted unreasonably and/or cannot substantiate their grounds of appeal.

## **Risks**

The key risk relating to appeal decisions relates to awards of costs against the Council.

An appeal can be lodged by the applicant if planning permission is refused, or if planning permission is granted but conditions are imposed, or against the Council's decision to take formal enforcement action. Costs can be awarded against the Council if decisions cannot be defended as reasonable, or if it behaves unreasonably during the appeal process, for example by not submitting required documents within required timescales. Conversely, costs can be awarded in the Council's favour if the appellant cannot defend their argument or behaves unreasonably.

An appeal can also be lodged by the applicant if the application is not determined within the statutory time period. However, with the type of major development being presented to the Planning Committee, which often requires a Section 106 agreement, it is unlikely that the application will be determined within the statutory time period. Appeals against non-determination are rare due to the further delay in receiving an appeal decision: it is generally quicker for applicants to wait for the Planning Authority to determine the application. Costs could only be awarded against the Council if it is found to have acted unreasonably. Determination of an application would only be delayed for good reason, such as resolving an objection or negotiating improvements or Section 106 contributions, and so the risk of a costs award is low.

Mitigation measures to reduce risk are detailed in the table below. The probability of these risks occurring is considered to be low due to the mitigation measures, however the costs associated with a public inquiry can be very significant. These are infrequent, so the impact is considered to be medium.



Risk	Impact of Risk if it occurs* (H/M/L)	Probability of risk occurring (H/M/L)	What is the Council doing or what has it done to avoid the risk or reduce its effect	Who is responsible for dealing with the risk?
Decisions challenged at appeal and costs awarded against the Council.	M	L	<p>Ensure reasons for refusal can be defended at appeal;</p> <p>Ensure planning conditions imposed meet the tests set out in Circular 016/2014.</p> <p>Provide guidance to Planning Committee regarding relevant material planning considerations, conditions and reasons for refusal.</p> <p>Ensure appeal timetables are adhered to.</p>	<p>Planning Committee</p> <p>Planning Committee</p> <p>Development Services Manager and Senior Legal Officer</p> <p>Planning Officers</p>
Appeal lodged against non-determination, with costs awarded against the Council	M	L	Avoid delaying the determination of applications unreasonably.	Development Services Manager

\* Taking account of proposed mitigation measures

### Links to Council Policies and Priorities

Not applicable. This report is to inform Planning Committee of decisions made by the Planning Inspectorate and/or Welsh Ministers.

### Options Available

To accept the appeal decisions as a basis for informing future decisions of the Planning Committee.

### Preferred Option and Why

To accept the appeal decisions as a basis for informing future decisions of the Planning Committee.

### Comments of Chief Financial Officer

In the normal course of events, there should be no specific financial implications arising from the determination of planning applications or enforcement action.

There is always a risk of a planning decision being challenged at appeal. This is especially the case where the Committee makes a decision contrary to the advice of Planning Officers or where in making its decision, the Committee takes into account matters which are not relevant planning considerations. These costs can be very considerable, especially where the planning application concerned is large or complex or the appeal process is likely to be protracted.

Members of the Planning Committee should be mindful that the costs of defending appeals and any award of costs against the Council following a successful appeal must be met by the taxpayers of Newport.

There is no provision in the Council's budget for such costs and as such, compensating savings in services would be required to offset any such costs that were incurred as a result of a successful appeal.

### **Comments of Monitoring Officer**

There are no legal implications other than those referred to in the report or detailed above.

### **Staffing Implications: Comments of Head of People and Business Change**

Development Management work is undertaken by an in-house team and therefore there are no staffing implications arising from this report. Officer recommendations have been based on adopted planning policy which aligns with the Single Integrated Plan and the Council's Corporate Plan objectives.

### **Local issues**

Not applicable. This report is to inform Planning Committee of decisions made by the Planning Inspectorate and/or Welsh Ministers.

### **Equalities Impact Assessment and the Equalities Act 2010**

The Equality Act 2010 contains a Public Sector Equality Duty which came into force on 06 April 2011. The Act identifies a number of 'protected characteristics', namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership. The new single duty aims to integrate consideration of equality and good relations into the regular business of public authorities. Compliance with the duty is a legal obligation and is intended to result in better informed decision-making and policy development and services that are more effective for users. In exercising its functions, the Council must have due regard to the need to: eliminate unlawful discrimination, harassment, victimisation and other conduct that is prohibited by the Act; advance equality of opportunity between persons who share a protected characteristic and those who do not; and foster good relations between persons who share a protected characteristic and those who do not. The Act is not overly prescriptive about the approach a public authority should take to ensure due regard, although it does set out that due regard to advancing equality involves: removing or minimising disadvantages suffered by people due to their protected characteristics; taking steps to meet the needs of people from protected groups where these differ from the need of other people; and encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

An Equality Impact Assessment for delivery of the Development Management service has been completed and can be viewed on the Council's website.

### **Children and Families (Wales) Measure**

Not applicable. This report is to inform Planning Committee of decisions made by the Planning Inspectorate and/or Welsh Ministers.

### **Consultation**

Not applicable. This report is to inform Planning Committee of decisions made by the Planning Inspectorate and/or Welsh Ministers.

### **Background Papers**

Not applicable

Dated: 5<sup>th</sup> February 2020

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**Planning Application Appeal**

Reference	19/0824
Address	15 Priory Close, Caerleon, Newport, NP18 3SY
Development	Proposed three storey front balcony and a two storey raised walkway to side of existing property
Appellant	Mr & Mrs Brookner
Officer Decision	Refuse
Committee Decision	N/A
Appeal Decision	Dismissed

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**Planning Application Appeal**

Reference	19/0596
Address	56 Ogmores Crescent, Bettws, Newport, NP20 7SJ
Development	Proposed porch extension to front elevation and installation of 2 No. dormer roof extensions
Appellant	Mr Ryan
Officer Decision	Refuse
Committee Decision	N/A
Appeal Decision	Part dismissed – Part allowed

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**Planning Application Appeal**

Reference	19/0654
Address	8 Edney View, Newport, NP10 8HP
Development	Conversion of garage to habitable accommodation (resubmission following refusal of 18/1192)
Appellant	Mr & Mrs Mark Williams
Officer Decision	Refuse
Committee Decision	N/A
Appeal Decision	Dismissed

